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The End of Tolerance:

Engaging Cultural Differences

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Usha Menon • Martha Minow • Lawrence G. Sager • Austin Sarat
Richard A. Shweder • Claude M. Steele • Dorothy M. Steele
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The End of Tolerance: Engaging Cultural Differences

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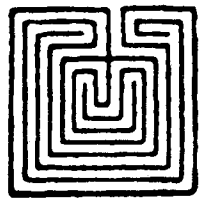

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Richard A. Shweder, Martha Minow, and Hazel Rose Markus

Introduction

THE TITLE "THE END OF TOLERANCE" has several meanings: the aim of tolerance, the scope of tolerance, the limits of tolerance, the possibility of going beyond "mere tolerance," and, of course, the discontinuation of tolerance. The essays in this issue of *Dædalus* are concerned with the end of tolerance for cultural differences in all of those senses. How are Western democratic legal systems responding to increasingly diverse populations, and how should they respond? Growing numbers of people from Asia, Mexico and Latin America, and parts of Africa seek to emigrate because of better labor market opportunities abroad or persecution or political conflict at home. The first notable legal response by the United States and other Western democracies to rising emigration rates has been the establishment of relatively open borders. Yet not everyone celebrates the result. Residents of countries such as the United States, Austria, Germany, Norway, France, and England currently express a range of views in response to public opinion poll questions that ask: "Do you think there are too many foreigners around?" Indeed, on the global scene these days, the image of a world made up of "multinational corporations" and "multicultural states" with relatively open borders competes with various forms of "cultural nationalism."

The public and legal responses to immigrants are closely tied to the more general issue of what shape multiculturalism should

Richard A. Shweder, Martha Minow, and Hazel Rose Markus are guest editors of and contributors to this issue of Dædalus.

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take in tolerant societies that are also committed to advancing liberal human rights, including commitments to gender equality and neutrality toward religion and race. In multicultural settings where majority and minority populations may bump into each other's beliefs and practices with some antagonism, anthropologists, legal scholars, and psychologists find they can no longer avoid the issue of cultural analysis and assessment. Family-life practices, including discipline, sex role differentiation, marriage selection, and coming-of-age ceremonies, appear at the heart of recent controversies about the limits of tolerance in modern pluralistic societies. Those who study family life are increasingly called upon not only to describe and explain but also to judge when a West African father living in England inscribes tribal identity markings on the face of his nine-year-old son; or when a Mexican mother living in Houston, Texas, finds it perfectly natural to leave her three-year-old at home in the care of a preadolescent sibling; or when a South Asian father—now residing in Chicago, Illinois—grabs his disobedient son by his ear and drags him out of a store. In each instance, other residents may call the police or child protective services and charge child abuse. How should public agencies respond, and should legal authorities ever recognize a defense to child abuse—or other charges—if framed in terms of cultural practice or religious belief? The prevalence of this question reveals how coming to terms with diversity in an increasingly multicultural world has become one of the most pressing public policy projects for liberal democracies in the new millennium.

The essays collected here explore patterns of migration; the variety of legal arrangements used to govern populations across lines of religion, culture, race, and gender; the scope and limits of pluralism in liberal democracies; and the strategies used by individuals and groups both to evade conflict with formal legal regimes and to prompt state involvement when it seems advantageous. As a strategy to evade legal scrutiny, some religious and cultural leaders have discerned ways to alter or hide their practices to avoid direct collision with public norms. As a strategy to prompt state involvement, some immigrant teens have become quite savvy about how to trigger state investigation and

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action amidst conflict with parents when the family moves to a nation where child protection is a public responsibility.

Nation-states differ in their constitutional treatments of the relationships between religion and state, in their willingness to recognize group rights, and in their ideas about what is public and what is private. Each of these arrangements affects the room left for "differences" and the occasions for and treatment of norm conflict between mainstream populations and minority groups, between formal law and informal norms, and between immigrant parents and their children. At the same time, emigrating communities endorse and uphold beliefs, values, and practices that make them seem more or less foreign to the dominant cultures in the receiving societies. Understanding why some features seem foreign requires intense examination of the extent to which a particular legal system implicitly presupposes, codifies, and inculcates the substantive beliefs and values of a cultural mainstream or majority.

The authors in this issue participated in the activities of an interdisciplinary working group on "Ethnic Customs, Assimilation, and American Law" (http://www.ssrc.org/fcom9.htm). Supported by the Russell Sage Foundation and organized by the Social Science Research Council, the legal scholars, anthropologists, social psychologists, and political theorists who compose the group have examined the "free exercise of culture"—how free is it, and how free ought it to be? Some of the essays published here seek to discern the grounds upon which a given cultural practice is deemed tolerable within particular contemporary societies that embrace democratic values. Others try to articulate the circumstances under which a liberal, democratic order should treat certain practices as intolerable. They seek to understand precisely what it is about an emigrating community's beliefs, values, and practices that makes them seem foreign to the normative culture and laws of the United States and other Western democracies, and alien to the ethical intuitions and special versions of common sense of particular mainstream populations. Of equal concern is documenting how individuals and groups negotiate coexistence and how specific contemporary societies debate issues of accommodation and assimilation across lines of difference.

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Although the authors differ in their own disciplinary frameworks and even normative visions, they share respect for comparative study in three senses. Comparing how different nations, and different communities within nations, respond to issues of group difference affords deeper understanding of the common challenges of diversity and the range of potential legal and social responses to multicultural life. In addition, comparing how societies respond to new immigrants where there are preexisting lines of social difference (such as the racial line in the United States) helps bring into focus the deep values of particular societies and the legal resources available for dealing with these differences. Finally, comparing detailed examinations of particular group experiences with theoretical approaches to norm conflict can sharpen both kinds of inquiries.

In a rapidly "globalizing" world, conflicts over culture are as likely to come from immigrant groups rejecting the norms they encounter in a new society as from the resistance of majority groups to minority practices. It is our hope that these essays will spark further attention to how much legal orders can and should make room for cultural variety—as well as how individuals can achieve legal respect as individuals and how varied paths toward meaningful lives can be valued in a quickly changing world.

The eleven essays published here are a sample of a larger collection of papers developed in the context of the activities of the Russell Sage Foundation/Social Science Research Council Working Group. The full set will be published subsequently in a book titled *The Free Exercise of Culture: How Free Is It? How Free Ought It To Be?* Considered as a whole, these contributions address one or more of six questions: 1) Which aspects of American (or Norwegian or German) law impact on ethnic minority customs? 2) To what extent does the law presuppose, codify, and hence inculcate the substantive beliefs and values of a cultural mainstream? 3) How much cultural diversity in family-life practices ought to be permissible within the moral and constitutional framework of a liberal pluralistic democratic society? 4) How strong are the implications of citizenship for the way people in countries such as the United States, Norway, Germany, India, or South Africa marry, ar-

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range a "family," discipline and raise their children, conceptualize gender identity, and so on? 5) What does it mean for an ethnic custom or practice to be judged "un-American"? 6) How do ethnic minority communities react to official attempts to force compliance with the cultural and legal norms of (for example) American middle-class life?

We are deeply indebted to Frank Kessel, Social Science Research Council program director for the working group on Ethnic Customs, Assimilation, and American Law. A creative scholar, psychologist, and administrator, he helped structure and develop a series of activities at SSRC informally known as the "pluralism project." We also wish to express our thanks to Julie Lake, program assistant for the working group, for the meticulous and timely production of this manuscript. Stephen Graubard brought his learning, wisdom, and probing questions to several meetings of the working group and to the essays that emerged. We would like to express our gratitude to him and special thanks that this work could begin before his remarkable tenure at *Dædalus* came to an end. This project would not have been possible without the support and vision of Eric Wanner, president of the Russell Sage Foundation. Under his inspiring leadership the foundation has become a leading center for research on the lives and well-being of immigrant and nonimmigrant minority groups in the United States and a forum for serious debate about public policy issues.

The preparation of this manuscript took place while Richard Shweder was a fellow at the Wissenschaftskolleg zu Berlin (The Institute for Advanced Study in Berlin, also known as WIKO). Special thanks to Wolf Lepenies, Jürgen Kocka, Joachim Nettelbeck, and the staff of WIKO for creating and sustaining one of the greatest intellectual centers in the world for scholarship in the social sciences and the humanities.

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We are not an assimilative, homogeneous society, but a facilitative, pluralistic one, in which we must be willing to abide by someone else's unfamiliar or even repellent practice because the same tolerant impulse protects our own idiosyncrasies.

Supreme Court Justice William Brennan
dissenting, *Michael H.* v. *Gerald D.*,
491 US 141 (1989)

It's amazing the things we don't know about this country. I learned that in this country anyone can call the police if they see you pulling your son's ear. (Comment by Jorge Arevalo, a Peruvian immigrant in Miami, who had to convince social workers that he was a competent father after an observer in a parking lot complained that he had grabbed his five-year-old by the neck.)

M. Ojito
From "Culture Clash: Foreign Parents,
American Child Rearing,"
New York Times, 29 June 1997
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Positioning Muslims in France, Whites in South Africa, Arabs in Israel, or Koreans in Japan are not altogether the same sort of thing. But if political theory is going to be of any relevance at all in the splintered world, it will have to have something cogent to say about how, in the face of a drive towards a destructive integrity, such structures can be brought into being, how they can be sustained, and how they can be made to work.

Clifford Geertz
From *Available Light: Anthropological Reflections on Philosophical Topics*
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Marcelo M. Suárez-Orozco

Everything You Ever Wanted to Know About Assimilation But Were Afraid To Ask

AS IF BY CENTENNIAL DESIGN the first and last decades of the twentieth century have been eras of large-scale immigration (see figures 1 and 2). During the first decade of the twentieth century, the United States saw the arrival of what was then the largest wave of immigration in history when a total of 8,795,386 immigrants, the vast majority of them European peasants, entered the country. By the 1990s, the wave of "new immigration" (which began in 1965) peaked when about a million new immigrants were arriving in the United States each year. By 1998 the United States had over 25 million immigrants, setting a new historic record.[1]

Two dominant features characterize this most recent wave of immigration: its intensity (the immigrant population grew by 30 percent between 1990 and 1997) and the somewhat radical shift in the sources of new immigration: up to 1950, nearly 90 percent of all immigrants were Europeans or Canadians; today over 50 percent of all immigrants are from Latin America, and 27 percent are from Asia (see table 1).

The recent U.S. experience is part of a broader—indeed, global—dynamic of intensified transnational immigration. As we enter the twenty-first century, the worldwide immigrant population is over 100 million people—plus an estimated 20 to

Marcelo M. Suárez-Orozco is professor of human development and psychology, and co-director of the Harvard Immigration Project, Harvard University.

This essay is part of a forthcoming volume, The Free Exercise of Culture, *edited by R. Shweder, M. Minow, and H. Markus.* *© Russell Sage Foundation. All rights reserved.*

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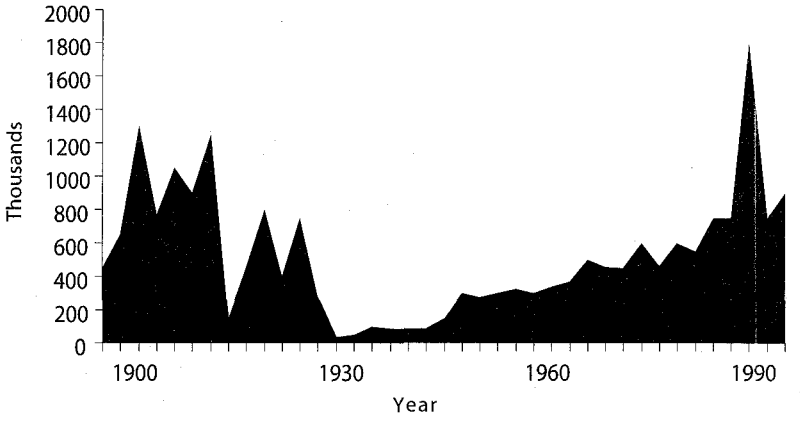
Figure 1. Immigrants Admitted: Fiscal Years 1900–1996



Source: Adapted from U.S. Department of Justice, Immigration and Naturalization Service, *Statistical Yearbook of the Immigration and Naturalization Service* (Washington, D.C.: G.P.O., 1998).

30 million refugees. And these numbers reveal only the tip of a much larger immigration iceberg; by far the majority of immigrants and refugees remain within the confines of the "developing world" in individual nation-states. China, for example, has an estimated 100 million internal migrants.[2]

It is not surprising, then, that in recent years there has been renewed interest in basic research and policy in the field of

Table 1. Foreign Born as a Percentage of the Total U.S. Population

	1880	1900	1920	1950	1960	1970	1980	1990	1997
% foreign born	13.3	13.6	13.3	6.9	5.4	4.7	6.2	8.6	9.3*

*1998 foreign-born population=25,208,000

Percentage of Foreign Born by Region of Origin

	1880	1920	1950	1980	1997
Europeans	97%	93.6%	89.3%	49.6%	17%
Asians	1.6	1.7	2.65	18	27
Latin Americans	1.3	4.2	6.3	31	51

Source: Harvard Immigration Project, 2000.

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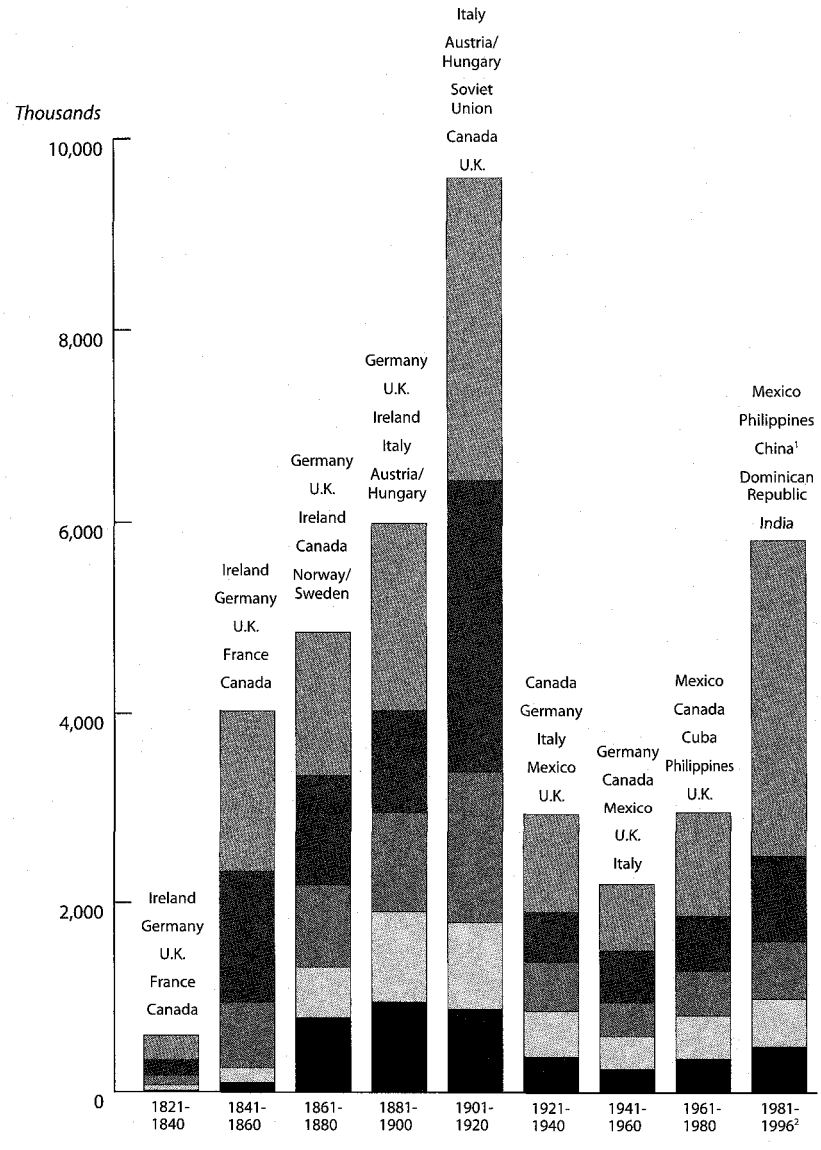
Figure 2. Immigrants Admitted: Country of Origin, Top Five Countries



[1]Includes People's Republic of China and Taiwan; [2]Sixteen-year period.

Source: Adapted from U.S. Department of Justice, Immigration and Naturalization Service, *Statistical Yearbook of the Immigration and Naturalization Service* (Washington, D.C.: G.P.O., 1998).

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immigration. While there is now robust scholarly activity on some aspects of immigration—for example, its economic causes and consequences—the scholarship on other important facets is somewhat anemic. For example, we know comparatively little about the long-term adaptations of immigrant children—the fastest-growing sector of the child population in the United States. Data and conceptual work on their health, schooling, and transition to the world of work are quite limited.[3] So is the work on the cultural processes of change generated by large-scale immigration. This is in part because labor economists, demographers, and sociologists have set the tone of the current research agenda—while anthropologists, psychologists, legal scholars, and scholars of the health sciences have played a more modest role.

Large-scale immigration is at once the cause and consequence of profound social, economic, and cultural transformations.[4] It is important to differentiate analytically between the two. While the claim has been made that there are powerful economic interests in having a large pool of foreign workers (a major cause of large-scale immigration), immigration nevertheless generates anxieties and at times even fans the fires of xenophobia (a major consequence of large-scale immigration). Two broad concerns have set the parameters of the debate over immigration scholarship and policy in the United States and Europe: the economic and the sociocultural consequences of large-scale immigration.

Recent economic arguments have largely focused on 1) the impact of large-scale immigration on the wages of native workers (Do immigrants depress the wages of native, especially minority, workers?), 2) the fiscal implications of large-scale immigration (Do immigrants "pay their way" taxwise, or are they a burden, consuming more in publicly funded services than they contribute?), and 3) the redundancy of immigrants, especially poorly educated and low-skilled workers, in new knowledge-intensive economies that are far less labor intensive than the industrial economies of yesterday.[5]

Reducing the complexities of the new immigration to economic factors can, of course, be limiting. Indeed, there is an emerging consensus that the economic implications of large-

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scale immigration are somewhat ambiguous. Research shows that immigrants generate benefits in certain areas (including worker productivity) and costs in others (especially in fiscal terms). Furthermore, we must not lose sight of the fact that the U.S. economy is so large, powerful, and dynamic that, ideologues aside, immigration will neither make nor break it. The total size of the U.S. economy is on the order of $7 trillion; immigrant-related economic activities are a small portion of that total (an estimated domestic gain on the order of $1 to $10 billion a year, according to a National Research Council study).[6]

The fact that the most recent wave of immigration is comprised largely of non-European, non-English speaking "people of color" arriving in unprecedented numbers from Asia, the Caribbean, and Latin America (see table 2 and figure 3) is at the heart of current arguments over the sociocultural consequences of immigration. While the debates over the economic consequences of immigration are largely focused on the three areas of concern discussed above, the debate over the sociocultural implications is somewhat more diffused. Some scholars have focused on language issues, including bilingual education (Are they learning English?). Others examine the political consequences of large-scale immigration (Are they becoming American in letter and in spirit?). Still others focus on immigrant practices that are unpalatable in terms of the cultural models and social practices of the mainstream population (the eternal issues here are female genital cutting, arranged marriages, and, in Europe especially, the veil).

Table 2. Region of Birth of Foreign-Born Population

Year	Total	Europe	Asia	Africa	Oceania	Latin America
1900	10,341,276	8,881,548	120,248	2,538	8,820	137,458
1960	9,738,091	7,256,311	490,996	35,355	34,730	908,309
1970	9,619,302	5,740,891	824,887	80,143	41,258	1,803,970
1980	14,079,906	5,149,572	2,539,777	199,723	77,577	4,372,487
1990	19,767,316	4,350,403	4,979,037	363,819	104,145	8,407,837

Source: Adapted from U.S. Bureau of the Census, Current Population Reports, Series P23–195, *Profile of the Foreign-Born Population in the United States: 1997* (Washington, D.C.: G.P.O., 1999).

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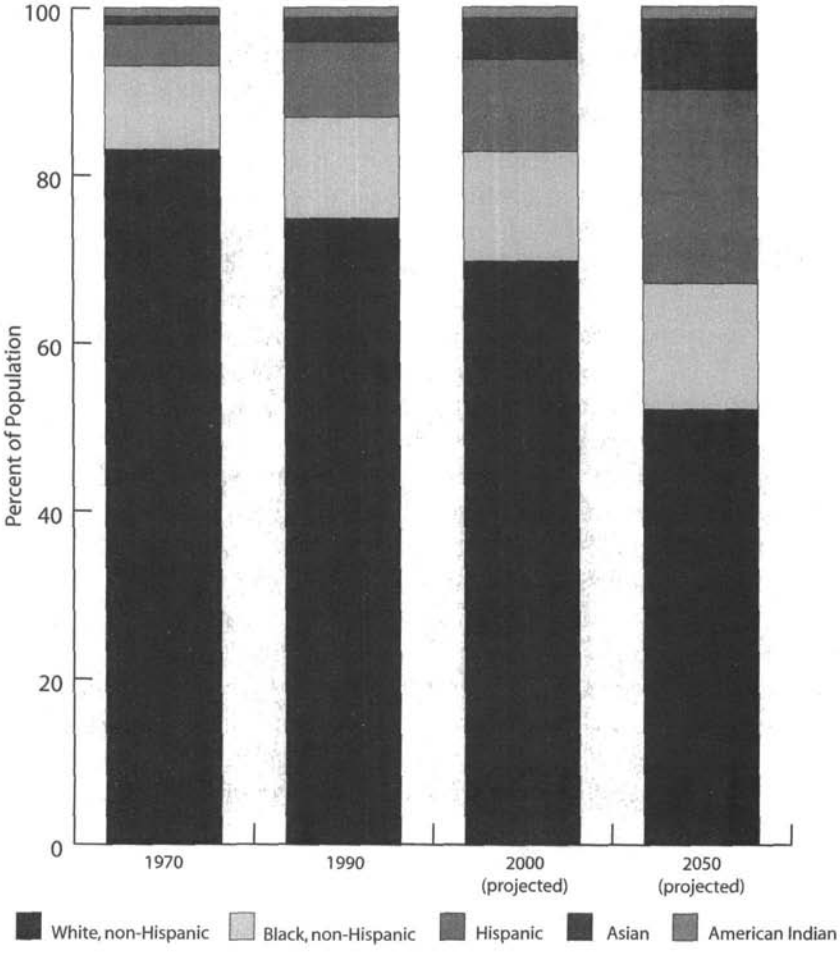
Figure 3. Racial/Ethnic Composition of the Population



Source: U.S. Bureau of the Census, Current Population Reports (Washington, D.C.: G.P.O., 1996).

RETHINKING ASSIMILATION

Old ideas about immigrant "assimilation" and "acculturation"—first articulated to make sense of the experiences of the transatlantic migrants of a century ago—have naturally been dusted off and tried out on the new arrivals. But in this case, applying the old to the new is not simply a reflex, a kind of intellectual

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laziness. Rather, I think it suggests that thinking about immigration in the United States is always, explicitly or implicitly, a comparative exercise: the here and now of the "new immigration" versus what, for lack of a better term, we might call the "mythico-historic" record.[7] This is a record in which equal parts of fact, myth, and fantasy combine to produce a powerful cultural narrative along the following lines: poor but hard-working European peasants, pulling themselves up by their bootstraps, willingly gave up their counterproductive old-world views, values, and languages—if not their accents!—to become prosperous, proud, and loyal Americans.[8]

Because the United States is arguably the only postindustrial democracy in the world where immigration is at once history and destiny, every new wave of immigration reactivates an eternal question: How do the "new" immigrants measure up to the "old"? This was asked one hundred years ago when the "new" immigrants were Irish, Italians, and Eastern Europeans and the "old" immigrants were English (see figure 2). The recurring answer to that question is somewhat predictable. New immigrants *always* fail the comparative test by falling short of the mythico-historic standards set by earlier immigrants. Hence, the most basic rule governing public attitudes about immigration: we love immigrants at a safe historical distance but are much more ambivalent about those joining us now.[9]

It is hardly surprising, then, what questions many are asking today: Are the new immigrants of color recreating the structures of the foundational mythico-historic narrative—the grammar of which was articulated in Irish, Italian, and Eastern European accents on the streets and docks of the Lower East Side of Manhattan one hundred years ago? Or is today's unprecedented racial and cultural diversity—think of the over one hundred languages now spoken by immigrant children in New York City schools—generating an entirely new script? Is what we hear today an incomprehensible Babelesque story, which is not only unlike anything we have heard before but is quite likely to contribute to our already polarized race relations and chronic "underclass" problems? Will today's new arrivals turn out to be like our mythical immigrant ancestors and assimilate,

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becoming loyal and proud Americans? Or, conversely, will they by the sheer force of their numbers redefine what it is to be an American?

Much of the analytic—as well as the emotional—framework for approaching the topic of immigration was developed as the then-young nation was in the process of metabolizing the great transatlantic European immigration wave of a century ago. Ideas about "assimilation" and "acculturation," terms often used interchangeably, were first introduced in the social sciences to examine the processes of social and cultural change set in motion as immigrants began their second journey: their insertion into mainstream American life.[10] The basic theme in the narratives of "assimilation" and "acculturation" theories that came to dominate the social sciences predicted that immigration sets in motion a process of change that is directional, indeed unilinear, nonreversible, and continuous.

The direction or aim of the process was said to be "structural assimilation" (typically operationalized in terms of social relations and participation in the opportunity structure) and "acculturation" (typically operationalized in terms of language, values, and cultural identifications) into what was, implicitly or explicitly, the prize at immigration's finish line: the middle-class, white, Protestant, European American framework of the dominant society.[11] The process as it was narrated in the social-science literature seemed to follow neatly the van Gennepian structural code: *separation* (from social relations and from participation in the opportunity structure of the country or culture of origin), *marginality* (residential, linguistic, economic; especially during the earlier phases of immigration and especially acute among the first generation), and, finally, a generation or two after immigration, *incorporation* into the social structures and cultural codes of the mainstream.

The process of change was said to be nonreversible in that once an immigrant group achieved the goals of acculturation and structural assimilation, there was, so to speak, "no going back." This is in part because scholars of immigrant change conceptualized it as a dual process of gain (new culture, participation in new social structures) and loss (old culture, old social structures). The process was said to be continuous because it

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took place transgenerationally. The immigrant generation (outsiders looking for a way in), the second generation (Americanized insiders), the third and forth generations (the "Roots" generation in search of "symbolic ethnicity"), and so on all had their assigned roles in this telling of the immigrant saga.

The dominant narratives of immigrant assimilation were structured by three reasonable assumptions. I will call them the "clean break" assumption, the "homogeneity" assumption, and the "progress" assumption. These assumptions, I suggest, need reexamination in light of some of the distinct features characterizing the latest wave of immigration.

First, immigration was theorized to take place in clearly delineated waves (versus ongoing flows) between two relatively remote, bounded geopolitical and cultural spaces. Immigrants left country "A" to settle permanently in country "B." When immigrants chose to return to their country of origin, and large numbers did, it was again seen as a permanent move.[12] The norm, however, was that immigrants leaving Ireland or Eastern Europe were not supposed to look back. This is hardly surprising, since the very idea of immigration was to look forward to a new start and better opportunities in a new country. The renaming rituals at Ellis Island, when immigrants traded—some voluntarily, others involuntarily—exotic names for "Americanized" versions, signified the beginning of a new life. A "clean break" was needed before the process of Americanization could begin.

The second assumption was that immigrants would, in due course, over two or three generations, join the mainstream of a society dominated by a homogeneous middle-class, white, European American Protestant ethos.[13] While American society was never homogenous, "the color line" being a defining feature of its landscape, it was never assumed that the African-American culture played a significant factor in the immigrant equation. When assimilation was debated it went without saying: its very point was to join mainstream culture.

The third assumption dominating thinking about immigrant assimilation was structured by a powerful teleological reflex: immigration is about uniform progress, about going from "good" (first generation) to "better" (second generation), to "best"

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(third and fourth generations). The immigrant's journey to success was the stuff of the American dream. *Ragtime*, the acclaimed Broadway musical, gives artistic form to this basic idea: the Russian family moves from the misery of the shtetl to glamorous Hollywood in one generation—assimilation in fast-forward, so to speak. Taken together with the two previous assumptions, a coherent narrative unfolds: as immigrants give up their old ways, and they assimilate to middle-class, white European American Protestant culture, they find enormous rewards.

THE "CLEAN BREAK" ASSUMPTION: A CRITIQUE

It may no longer be useful to assume that immigration takes place between remote, neatly bounded geopolitical spaces, where a "clean break" is, even if not desired, inevitable. Indeed, in recent years, anthropologists and sociologists have claimed that what is novel about the "new immigrants" is that they are actors on a transnational stage.[14] The relative ease and accessibility of mass transportation (1.5 billion airline tickets were sold last year) and the new globalized communication and information technologies make possible a more massive back-and-forth movement of people, goods, information, and symbols than ever before.[15] Compared to Mexican or Dominican immigrants today, the Irish and Eastern European immigrants of last century—even if they had wanted to—simply could not have maintained the level and intensity of contact with the "old country" that we are now witnessing.[16] Furthermore, the new immigration from such places as Latin America and the Caribbean can be best characterized as an uninterrupted "flow" rather than neatly delineated "waves" typical of the earlier European transatlantic immigration. This ongoing, uninterrupted migratory flow is said to "replenish" constantly social practices and cultural models that would otherwise tend to be "lost" to assimilation.[17] Indeed, in certain areas of the Southwest, Latin American immigration is generating a powerful infrastructure dominated by a growing Spanish-speaking mass media (radio, television, and print), new market dynamics, and new cultural identities.[18]

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Another relevant feature of the new transnational framework is that even as they enmesh themselves in the social, economic, and political life in their new lands, immigrants remain powerful protagonists in the economic, political, and cultural spheres back home.[19] With international remittances estimated at nearly $100 billion per annum, immigrant remittances and investments have become vital to the economies of most countries of emigration. A U.S.-Mexican Binational Study on Immigration estimates that remittances to Mexico were the "equivalent to 57 percent of the foreign exchange available through direct investment in 1995, and 5 percent of the total income supplied by exports."[20]

Politically, immigrants are emerging as increasingly relevant actors with influence in political processes both "here" and "there." Some observers have noted that the outcome of the most recent Dominican presidential election was largely determined in New York City—where Dominicans are the largest group of new immigrants. Likewise, Mexican politicians—especially those of the opposition—have recently "discovered" the political value of the seven million Mexican immigrants living in the United States. The new Mexican dual nationality initiative—whereby Mexican immigrants who become nationalized U.S. citizens would retain a host of political and other rights in Mexico—is also the product of this emerging transnational framework.[21]

Because of a new ease of mass transportation and new communication technologies, immigration is no longer structured around the "sharp break" with the country of origin that once characterized the transoceanic experience. Immigrants today are more likely to be at once "here" *and* "there," articulating dual consciousness and dual identities and, in the process, bridging increasingly unbounded national spaces.[22]

THE "HOMOGENEITY" ASSUMPTION: A CRITIQUE

It may no longer be useful to assume that immigrants today are joining a homogeneous society dominated by the middle-class, white, European American Protestant ethos.[23] The new immigrants are entering a country that is economically, socially, and

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culturally unlike the country that absorbed—however ambivalently—previous waves of immigrants. Economically, the previous large wave of immigrants arrived on the eve of the great industrial expansion in which immigrant workers and consumers played a key role.[24]

Immigrants now are actors in a thoroughly globalized restructured economy that is increasingly fragmented into discontinuous economic spheres. Some have characterized the new postindustrial economy in terms of the "hourglass" metaphor. On one end of the hourglass there is a well-remunerated, knowledge-intensive economic sphere that has recently experienced unprecedented growth. On the other end, there is a service economy where low-skilled and semiskilled workers continue to "lose ground" in terms of real wages, benefits, and security. Furthermore, in the new economy there are virtually no bridges for those at the bottom of the hourglass to move into the more desirable sectors. Some scholars have argued that unlike the low-skilled industry jobs of yesterday, the kinds of jobs typically available today to low-skilled new immigrants do not offer serious prospects of upward mobility.[25]

Another defining aspect of the new immigration is the intense social segregation between new immigrants of color and the middle-class, white, European American population. While immigrants have always concentrated in specific neighborhoods, we are witnessing today an extraordinary concentration of large numbers of immigrants in a handful of states in large urban areas polarized by racial tensions. Some 85 percent of all Mexican immigrants in the United States reside in three states (California, Texas, and Illinois). As a result of an increasing segmentation of the economy and society, large numbers of low-skilled immigrants "have become more, not less, likely to live and work in environments that have grown increasingly segregated from whites."[26] These immigrants have, by and large, no meaningful contact with the middle-class, white, European American culture. Rather, their point of reference is more likely to be co-nationals, co-ethnics, or the African-American culture.

But perhaps the lethal blow to the homogeneity assumption comes from what I call a "culture of multiculturalism." Rather

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than face a "relatively uniform 'mainstream'" culture,[27] immigrants today must navigate more complex and varied currents. The cultural models and social practices that we have come to call multiculturalism shape the experiences, perceptions, and behavioral repertoires of immigrants in ways not seen in previous eras of large-scale immigration. A hundred years ago there certainly was no culture of multiculturalism celebrating—however superficially and ambivalently—ethnicity and communities of origin. Indeed, the defining ritual at Ellis Island was the mythic renaming ceremony when immigration officers—sometimes carelessly and sometimes purposefully—renamed new arrivals with more Anglicized names, a cultural baptism of sorts. Others chose to change their names to avoid racism or anti-Semitism, or simply to "blend in." Hence, Israel Ehrenberg was reborn as Ashley Montague, Meyer Schkolnick was reborn as Robert Merton, and Issur Danielovitch Demsky was reborn as Kirk Douglas.[28]

Immigrants today enter social spaces where racial and ethnic categories are important gravitational fields—often charged—with important political and economic implications. The largest wave of immigration into the United States took place largely after the great struggles of the civil rights movement.

In that ethos, racial and ethnic categories became powerful instrumental as well as expressive vectors. By "expressive ethnicity" I refer to the subjective feeling of common origin and a shared destiny with others. These feelings are typically constructed around such phenomena as historic travails and struggles (as in the case of the Serbian sense of peoplehood emerging from their defeat five centuries ago at the hands of the Ottmans in the Battle of Kosovo), a common ancestral language (as in the case of the Basques), or religion (as in the case of the Jews in the Diaspora).[29]

By "instrumental ethnicity," I mean the tactical use of ethnicity. In recent years, "identity politics" has become a mode of expressive self-affirmation as well as instrumental self-advancement. This is in part because ethnic categories have become a critical tool of the state apparatus. Nation-states create categories for various reasons, such as to count people for census, taxation, and apportionment for political representation. Eth-

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nic categories as generated by state policy are relevant to a variety of civic and political matters; furthermore, they are appropriated and used by various groups for their own strategic needs.

Pan-ethnic categories such as "Asian American" and "Hispanic" are largely arbitrary constructions created by demographers and social scientists for purposes of data development, analysis, and policy. The term "Hispanic," for example, was introduced by demographers working for the U.S. Bureau of the Census in the 1980s as a way to categorize people who are either historically or culturally connected to the Spanish language. Note that "Hispanic," the precursor to the more au courant term Latino, is a category that has no precise meaning regarding racial or national origins. Indeed, Latinos are white, black, indigenous, and every possible combination thereof. They also originate in over twenty countries as varied from each other as Mexico, Argentina, and the Dominican Republic.[30]

For large numbers of new arrivals today, the point of reference seems to be the cultural sensibilities and social practices of their more established co-ethnics—i.e., Latinos, Asians, Afro-Caribbeans—rather than the standards of the increasingly more remote middle-class, white, Protestant European Americans.

THE "PROGRESS" ASSUMPTION: A CRITIQUE

The foundational narratives of immigrant assimilation typically depicted an upwardly mobile journey. The story was elegant in its simplicity: the longer immigrants were in the United States, the better they would do in terms of schooling, health, and income. As Robert Bellah once noted, "The United States was planned for progress," and each wave of immigrants was said to recapitulate this national destiny. This assumption needs rethinking in light of new evidence. A number of scholars from different disciplines using a variety of methods have identified a somewhat disconcerting phenomenon. For many new immigrant groups, length of residency in the United States seems to be associated with *declining* health, school achievement, and aspirations.[31]

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A recent large-scale National Research Council study considered a variety of measures of physical health and risk behaviors among children and adolescents from immigrant families—including general health, learning disabilities, obesity, and emotional difficulties. The NRC researchers found that immigrant youths tend to be healthier than their counterparts from nonimmigrant families. These findings are "counterintuitive in light of the racial and ethnic minority status, lower overall socioeconomic status, and higher poverty rates of many immigrant children and families." The NRC study also found that the longer immigrant youths are in the United States, the poorer their overall physical and psychological health. Furthermore, the more "Americanized" they became, the more likely they were to engage in risky behaviors such as substance abuse, unprotected sex, and delinquency (see figure 4). While the NRC data are limited, they nevertheless should be cause for reflection.[32]

In the area of education, sociologists Ruben Rúmbaut and Alejandro Portes surveyed more than five thousand high-school students in San Diego, California, and Dade County, Florida. Rúmbaut writes:

> an important finding supporting our earlier reported research is the *negative* association of length of residence in the United States with both GPA and aspirations. Time in the United States is, as expected, strongly predictive of improved English reading skills; but despite that seeming advantage, longer residence in the United States and second generation status [that is, being born in the United States] are connected to declining academic achievement and aspirations, net of other factors.[33]

In a different voice, Reverend Virgil Elizondo, rector of the San Fernando Cathedral in San Antonio, Texas, articulates this same problem: "I can tell by looking in their eyes how long they've been here. They come sparkling with hope, and the first generation finds hope rewarded. Their children's eyes no longer sparkle."[34]

A number of scholars are currently exploring the problem of decline in schooling performance, health, and social adaptation of immigrant children. Preliminary research suggests that sev-

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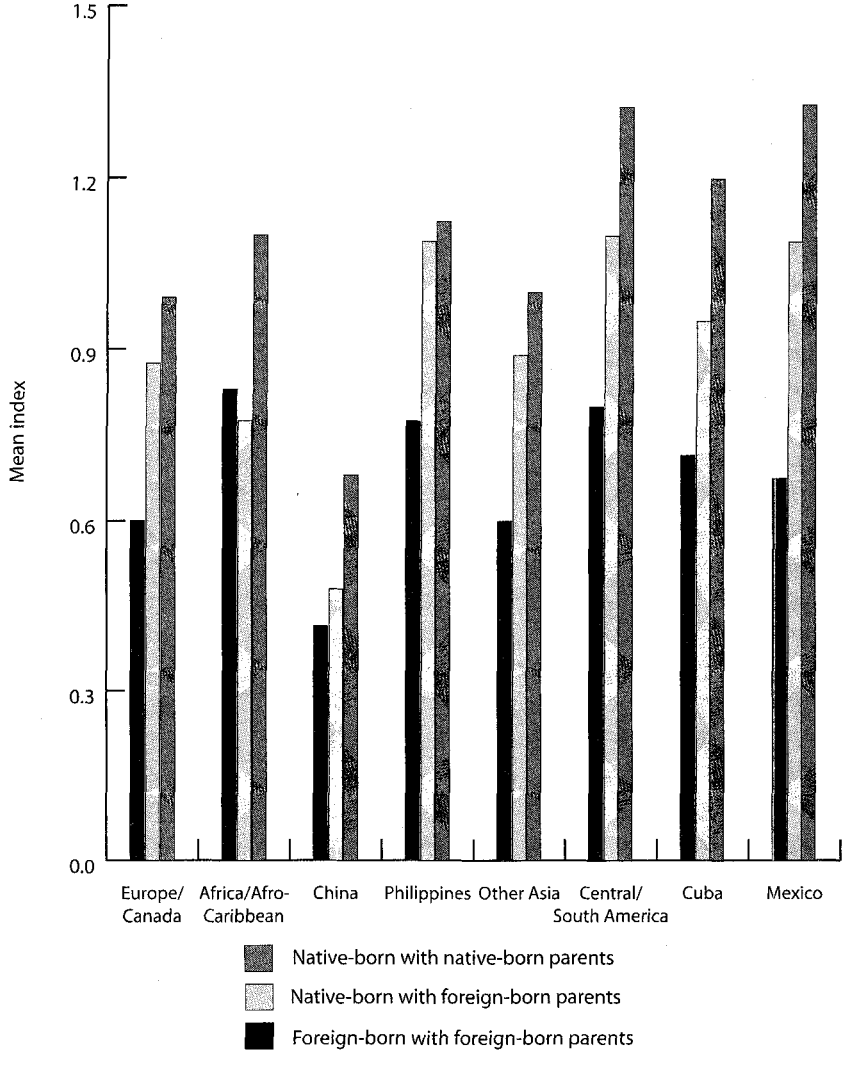
Figure 4. Mean Risk Behavior by Ethnic Group and Immigrant Status



Source: Adapted from National Research Council, *From Generation to Generation: The Health and Well-Being of Children in Immigrant Families* (Washington, D.C.: National Academy Press, 1998), 84. Copyright 1998 by the National Academy of Sciences. Courtesy of the National Academy Press, Washington, D.C. Reprinted by permission.

eral factors seem to be implicated. The various forms of "capital" that the immigrant families bring with them—including

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financial resources, social class and educational background, psychological and physical health, as well as social supports—have a clear influence on the immigrant experience. Legal status (documented versus undocumented immigrant), race, color, and language also mediate how children and families manage the upheavals of immigration. Economic opportunities and neighborhood characteristics—including the quality of schools where immigrants settle, racial and class segregation, neighborhood decay, and violence—all contribute significantly to the adaptation process. Anti-immigrant sentiment and racism also play a role. These factors combine in ways that seem to lead to very different long-term outcomes. Until better longitudinal data are available, it is no longer safe to assume that immigration inevitably leads to measurable progress.

Indeed, it may be wise to think about what is taking place today in the United States as two very distinct migratory formations—formations that have different causes and generate divergent outcomes. In the long term, these distinct dynamics may turn out to be quite different from what we have seen in the field of immigration before.

Utopia

One migratory formation is made up of highly educated, highly skilled workers drawn by the explosive growth in the knowledge-intensive sectors of the economy. These immigrants thrive. They are among the best-educated and most skilled people in the United States. Immigrants today are overrepresented in the category of people with doctorates. Fully half of all entering physics graduate students in 1998 were foreign-born.[35] Thirty-two percent of all scientists and engineers working in California's famed Silicon Valley are immigrants.[36] Roughly a third of all Nobel Prize winners in the United States have been immigrants. In 1999, all (100 percent!) U.S. winners of the Nobel Prize were immigrants. Perhaps with the exception of the highly educated immigrants and refugees escaping Nazi Europe, immigrants in the past tended to be more uniformly poorly educated and relatively unskilled than they are today.[37]

These immigrants are likely to settle in safe middle-class suburban neighborhoods—the kinds of neighborhoods that tend

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to have better schools. Their children, nor surprisingly, are outperforming native-born children in terms of grades, as winners of the nation's most prestigious science competitions, and as freshmen in the nation's most exclusive colleges—two of the three top Intel Science prizes in March of 2000 went to immigrant youths. These highly educated and skilled immigrants are rapidly moving into the more desirable sectors of the U.S. economy, generally bypassing the traditional transgenerational modes of immigrant status mobility.[38] Never in the history of U.S. immigration have so many immigrants done so well so fast. For them, immigration means Utopia realized.

Distopia

The other migratory formation is made up of large numbers of poorly educated, unskilled workers—many of them in the United States without proper documentation (i.e., as illegal aliens). These immigrants come to survive—some are escaping economies that more or less "broke" during global restructuring; others are escaping violence or war. They are workers drawn by the service sector of the U.S. economy where there seems to be an insatiable appetite for foreign workers. They typically end up in poorly paid jobs that offer no insurance or basic safeties and no promise of upward mobility.

These immigrants tend to settle in areas of deep poverty and racial segregation. Concentrated poverty is associated with the "disappearance of meaningful work opportunities."[39] Youngsters in such neighborhoods are chronically underemployed or unemployed and must search for work elsewhere. In such neighborhoods, with few opportunities in the formal economy, underground or informal activities tend to flourish. These kinds of economies often involve the trade of illegal substances and are associated with gangs and neighborhood violence. This ethos is the primary point of reference for many poor immigrant children of color today.

When poverty is combined with racial segregation, the outcomes can be devastating: no matter what their personal traits or characteristics, people who grow up and live in environments of concentrated poverty and racial isolation are more

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likely to become teenage mothers, drop out of school, achieve only low levels of education, and earn lower adult incomes.[40]

One hundred years ago, low-skilled immigrant workers with very little formal schooling could, through floor-shop mobility, attain living wages and a comfortable lifestyle. Today's global economy is unforgiving of immigrants without skills and credentials. Furthermore, low-skill service jobs not only lead nowhere in the status hierarchy but also fail to provide for the basic needs of a family. Indeed, new research suggests that among new immigrants, a general pattern of declining returns on education means that with more schooling they will be getting fewer rewards in the post-educational opportunity structure than ever before in the history of U.S. immigration.[41] The high-school graduate who bypasses college and enters the workforce with no special skills has only a limited advantage over the high-school dropout.[42]

Poor, low-skilled immigrants of color have few options but to send their children to schools located in drug-, prostitution-, and gang-infested neighborhoods.[43] All too many immigrant schools can only be characterized as sites overwhelmed by a "culture of violence."[44] Many newly arrived immigrant youths find themselves deeply marginalized in toxic schools that offer inferior education.[45]

In the long term, many immigrant youths of color coming from low-skilled and poorly educated backgrounds will face serious odds. Intense segregation, inferior schools, violent neighborhoods, structural and interpersonal racism—all co-conspire to snuff the immigrants' most precious asset: hope and optimism about the future.[46]

CULTURE AND ASSIMILATION: CONCLUDING THOUGHTS

This latest wave of immigration has rekindled the eternal American debate about the long-term consequences of large-scale immigration. Some worry about the economic implications, while many others have focused on its cultural implications. I turn now to some of these cultural concerns because, I think, they rest on a somewhat flawed understanding of culture.

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Analytically, it is sometimes useful to differentiate between two broad spheres of culture: "instrumental culture" and "expressive culture." By instrumental culture, I mean the skills, competencies, and social behaviors that are required successfully to make a living and contribute to society. By expressive culture, I mean the realm of values, worldviews, and the patterning of interpersonal relations that give meaning and sustain the sense of self. Taken together, these qualities of culture generate shared meanings and understandings, and a sense of belonging. In sum, the sense of who you are and where you belong is deeply patterned by these qualities of culture.

In the instrumental realm, there is arguably a worldwide convergence in the skills that are needed to function in today's global economy. Whether in Los Angeles, Lima, or Lagos, the skills that are needed to thrive in the global economy are in fundamental respects the same. These include communication, higher-order symbolic and technical skills as well as habits of work, and interpersonal talents that are common in any cosmopolitan setting.

Immigrant parents are very much aware that if their children are to thrive they must acquire these skills. Indeed, immigration for many parents represents nothing more, and nothing less, than the opportunity to offer children access to these skills. Indeed, we have yet to meet an immigrant parent who tells us that he does not want his daughter to learn English or to acquire the skills and work habits that will prepare her for a successful career whether in the United States or "back home."

While immigrant parents encourage their children to cultivate the "instrumental" aspects of culture in the new setting, they are decidedly more ambivalent about their children's exposure to some of the "expressive" elements of culture in the new land. During the course of our research, it has not been difficult to detect that many immigrant parents strongly resist a whole array of cultural models and social practices in American youth culture that they consider highly undesirable. These include cultural attitudes and behaviors that are anti-schooling ("school is boring") and anti-authority, the glorification of violence, and sexually precocious behaviors. Many immigrant parents reject and resist this form of acculturation.

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Hence, I claim that the incantation of many observers—"acculturate, acculturate, acculturate"—needs rethinking. If acculturation is superficially defined as acquiring linguistic skills, job skills, and participation in the political process, then there is a universal consensus on these shared goals. If, on the other hand, we choose a broader definition of assimilation and acculturation as also including the realm of values, worldviews, and interpersonal relations, then a worthy debate ensues.

The first issue that needs airing is the basic question of "acculturating to what?" American society is no longer, if it ever was, a uniform or coherent system. Given their diverse origins, financial resources, and social networks, immigrants end up gravitating toward very different sectors of American society. While some are able to join integrated well-to-do neighborhoods, the majority of today's immigrants come to experience American culture from the vantage point of poor urban settings. Limited economic opportunities, toxic schools, ethnic tensions, violence, drugs, and gangs characterize many of these settings. The structural inequalities found in what some social theorists have called "American Apartheid" are implicated in the creation of a cultural ethos of ambivalence, pessimism, and despair. Asking immigrant youths to give up their values, worldviews, and interpersonal relations to join this ethos is a formula for disaster.[47]

For those immigrants who come into intimate contact with middle-class mainstream culture, other trade-offs will be required. As our data suggest, immigrant children of color perceive that mainstream Americans do not welcome them and, indeed, disparage them as not deserving to partake in the American dream.[48] Identifying wholeheartedly with a culture that rejects you has its psychological costs, usually paid in the currency of shame, doubt, and even self-hatred.

But even if the new immigrants were unambivalently embraced by middle-class mainstream Americans, it is far from clear that mimicking their behaviors would prove to be in the long term an adaptive strategy for immigrants of color. Mainstream middle-class children are protected by social safety nets that give them leeway to experiment with an array of distopic behaviors that can include drugs, sex, and alcohol. On the other

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hand, for many immigrant youths, without robust socioeconomic and cultural safety nets, engaging in such behaviors is a high-stakes proposition in which one mistake can have lifelong consequences. While a white middle-class youth caught in possession of drugs is likely to be referred to counseling and rehabilitation, an immigrant youth convicted of the same offense is likely to be deported.

The current wave of immigration involves people from fantastically diverse and heterogeneous cultural backgrounds. Beneath surface differences, a common grammar can be identified among groups as culturally distinct from each other as Chinese, Haitian, and Mexican immigrants. The importance of family ties, the importance of hard work, and optimism about the future are examples of shared immigrant values.[49]

These three realms are aspects of culture that become highlighted and come to the fore in the process of immigration. Consider, for example, the case of strong family ties among immigrants. Many immigrants come from cultures in which the family system is an integral part of the person's sense of self. These family ties play a critical role in family reunification—an important force driving new immigration. Furthermore, once immigrants settle, family ties are accentuated because immigration poses many emotional and practical challenges forcing immigrants to turn to one another for support.[50]

Hard work and optimism about the future are likewise central to the immigrant's *raison d'être*. The immigrant's most fundamental motivation is to find a better life. Immigrants tend to view hard work as essential to this project. The fact that many immigrants will do the impossible jobs that native workers simply refuse to consider is an indication of just how hard they are willing to work. Immigrant family ties, work ethic, and optimism about the future are unique assets that should be celebrated as adding to the total cultural stock of the nation.

Immigration generates change. The immigrants themselves undergo a variety of transformations. Likewise, the immigration process inevitably changes the members of the dominant culture. In the United States today we eat, speak, and dance differently from the way we did thirty years ago, in part because of large-scale immigration. But change is never easy. The

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changes brought about by the new immigration require mutual calibrations and negotiations.

Rather than advocating that immigrant children abandon all elements of their culture as they embark on their uncertain assimilation journey, a more promising path is to cultivate and nurture the emergence of new hybrid identities and bicultural competencies.[51] These hybrid cultural styles creatively blend elements of the old culture with that of the new, unleashing new energies and potentials.[52]

The skills and work habits that are required to thrive in the new century are essential elements of assimilation. Immigrant children, like all children, must develop this repertoire of instrumental skills. At the same time, maintaining a sense of belonging and social cohesion with their immigrant roots is equally important. When immigrant children lose their expressive culture, social cohesion is weakened, parental authority is undermined, and interpersonal relations suffer. The unthinking call for immigrant children to abandon their culture can only result in loss, anomie, and social disruption.

The model of unilineal assimilation—in which the bargain was straightforward: please check all your cultural baggage before you pass through the Golden Gate—emerged in another era.[53] The young nation, then, was eager to turn large numbers of European immigrants into loyal citizen workers and consumers. It was an era of nation-building and bounded national projects.[54]

But even then, accounts of immigrants rushing in unison to trade their culture for American culture were greatly exaggerated. German Americans, Italian Americans, and Irish Americans have all left deep cultural imprints in the molding of American culture. Even among fifth-generation descendants of the previous great wave of immigration, symbolic culture and ethnicity remain an emotional gravitational field.[55]

But beyond the argument that maintaining the expressive elements of culture is symbolically important and strategic from the point of view of social cohesion, there is another point worth considering. In the global era, the tenets of unilineal assimilation are no longer relevant. Today there are clear and unequivocal advantages to being able to operate in multiple

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cultural codes—as anyone working in a major (and now not-so-major) corporation knows. There are social, economic, cognitive, and aesthetic advantages to being able to move across cultural spaces. Dual consciousness has its instrumental and expressive advantages. Immigrant children are in a position to maximize that unique advantage. While many view their cultural—including linguistic—skills as a threat, I see them as precious assets to be cultivated.

A renowned historian once said the history of the United States is in fundamental respects the history of immigration.[56] Throughout history, U.S. citizens have ambivalently welcomed newcomers. The fear then, as now, focused on whether the immigrants would contribute to the American project. The gift of hindsight demonstrates just how essential immigration has proven to the making and remaking of the American fabric.

However, with diversity comes conflict and dissent. Working through frictions in the public sphere by reasoned debate and compromise is central to the idea and practice of democracy. Immigrant children are uniquely poised to play a significant role in the remaking of American democracy. In the era of multiculturalism and transnationalism, their bicultural experiences and skills prepare them well to be the cultural brokers able to find the common ground.

ENDNOTES

[1]See, for example, *Profile of the Foreign-Born Population in the United States: 1997* (Washington, D.C.: U.S. Bureau of the Census, Current Population Reports, 1999).

[2]See, for example, Erik Eckholm, "For China's Rural Migrants, an Education Wall," *New York Times,* 12 December 1999, A8.

[3]See, for example, Carola Suárez-Orozco and Marcelo M. Suárez-Orozco, *Children of Immigration* (Cambridge, Mass.: Harvard University Press, 2000).

[4]Theorists of immigration have argued that transnationalized labor-recruiting networks, family reunification, and changing cultural models and expectations about, for example, what is an acceptable standard of living are all powerfully implicated in generating and sustaining new migratory flows. Wars nearly always generate large-scale immigration: World War II gave birth to the Mexican *bracero* program, which started the largest wave of immigration to the United States in history. Without the Cold War, there would not be today over a million Cuban Americans in the United States. The Southeast Asian

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Diaspora is the product of the war in Indochina. The million or so Central Americans that now make the United States their home arrived following the intensification of the U.S.-backed counterinsurgency campaigns in El Salvador, Guatemala, and Nicaragua of the 1980s.

[5]A great deal of energy has gone into assessing the economic consequences of immigration, and the research findings are somewhat ambiguous. Indeed, they are often contradictory—some economists claim that the new immigrants are a burden to taxpayers and an overall negative influence on the U.S. economy; others suggest that they continue to be an important asset. A recent study on the economic, demographic, and fiscal effects of immigration by the National Research Council concludes: "immigration produces net economic gains for domestic residents." National Research Council, *The New Americans: Economic, Demographic, and Fiscal Effects of Immigration* (Washington, D.C.: National Academy Press, 1997), 3. For another overview of immigrants and the economy, see George Borjas, *Heaven's Door: Immigration Policy and the American Economy* (Princeton, N.J.: Princeton University Press, 1999).

[6]National Research Council, *The New Americans*, 5.

[7]Suárez-Orozco and Suárez-Orozco, *Children of Immigration.*

[8]For a recent exquisite treatment of this narrative, see Riv-Ellen Prell, *Fighting to Become Americans: Jews, Gender, and the Anxiety of Assimilation* (Boston: Beacon Press, 1999). Consider also the introductory paragraph on a recent *New York Times* story on the families of vice-presidential candidate Senator Joseph Lieberman and his immigrant wife, Mrs. Hadassah Lieberman, a child of Holocaust survivors: "They came over on wobbling merchant marine ships, refugees with a few valises apiece that contained all they owned in the world. Rebuilding from scratch—they had, after all, lost their homes and most of their closest kin—they worked at low-paying jobs in dingy dress factories, luncheonettes, dry-goods stores. For many, it was too late for any grander aspirations. Their children would redeem their expectations." Joseph Berger, "Mrs. Lieberman's Story, and Others," *New York Times*, 13 August 2000, A26.

[9]Suárez-Orozco and Suárez-Orozco, *Children of Immigration.*

[10]See, inter alia, Robert E. Park and Ernest W. Burgess, *Introduction to the Science of Sociology* (Chicago: University of Chicago Press, 1965); Milton M. Gordon, *Assimilation in American Life: The Role of Race, Religion, and National Origins* (New York: Oxford University Press, 1964); and Richard Alba and Victor Nee, "Rethinking Assimilation Theory for a New Era of Immigration," *International Migration Review* (31) (Winter 1997).

[11]The process of change was said to be unilinear in that all new arrivals would be expected to undergo roughly the same process of change.

[12]See, for example, Jose C. Moya, *Cousins and Strangers: Spanish Immigrants in Buenos Aires, 1850–1930* (Berkeley: University of California Press, 1998) and Michael Piore, *Birds of Passage: Migrant Labor and Industrial Societies* (New York: Cambridge University Press, 1971).

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[13]See, for example, Alejandro Portes, ed., *The New Second Generation* (New York: Russell Sage, 1996).

[14]See Peggy Levitt, "Transnationalizing Civil and Political Change: The Case of Transnational Organizational Ties between Boston and the Dominican Republic," Ph.D. dissertation, Massachusetts Institute of Technology, 1996; "Commentary," in Marcelo M. Suárez-Orozco, ed., *Crossings: Mexican Immigration in Interdisciplinary Perspectives* (Cambridge, Mass.: David Rockefeller Center for Latin American Studies and Harvard University Press, 1998); Linda Basch, Nina Glick Schiller, and Cristina Szanton Blanc, *Nations Unbound: Transnational Projects, Postcolonial Predicaments and Deterritorialized Nation-States* (Basel, Switzerland: Gordon and Breach Science Publishers, 1994).

[15]Borrowing the delicious words of Luís Rafael Sanchez, many new immigrants today live neither here nor there but rather in "*la guagua aérea*"—the air bus.

[16]See Ricardo Ainslie, "Cultural Mourning, Immigration, and Engagement: Vignettes from the Mexican Experience," in Suárez-Orozco, ed., *Crossings: Mexican Immigration in Interdisciplinary Perspectives.*

[17]See David G. Gutierrez, "Ethnic Mexicans and the Transformation of 'American' Social Space: Reflections on Recent History," in Suárez-Orozco, ed., *Crossings: Mexican Immigration in Interdisciplinary Perspectives.*

[18]Since 1990, while the Hispanic population in the United States grew by more than 30 percent, its buying power has grown by more than 65 percent, to about $350 billion in 1997. This is changing the way business is conducted in many parts of the country.

[19]Wayne Cornelius, "The Structural Embeddedness of Demand for Mexican Immigrant Labor," in Suárez-Orozco, ed., *Crossings: Mexican Immigration in Interdisciplinary Perspectives*; and Jorge Durand, "Migration and Integration," in ibid.

[20]See Binational Study, *Migration Between Mexico and the United States* (Washington, D.C.: U.S. Commission on Immigration Reform, 1998). Cornelius, however, argues that over time Mexican immigrants in the United States are less likely to invest in capital improvements in the communities they emigrated from. In fact, he argues that a new feature of the Mexican experience in the United States is that as Mexican immigrants become increasingly rooted in the U.S. side of "the line," they mainly go back to these communities for rest and relaxation. See Cornelius, "The Structural Embeddedness."

[21]Culturally, immigrants not only significantly reshape the ethos of their new communities but are also responsible for significant social transformations "back home." Peggy Levitt has argued that Dominican "social remittances" affect the values, cultural models, and social practices of those left behind. See Levitt, "Transnationalizing Civil and Political Change."

[22]Basch, Schiller, and Blanc, *Nations Unbound.*

[23]I concur with Alejandro Portes when he argues that we can no longer assume that new immigrants will assimilate into a coherent mainstream.

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[24]John Higham, *Send These To Me: Jews and Other Immigrants in Urban America* (New York: Atheneum, 1975).

[25]Portes, *The New Second Generation.*

[26]Roger Waldinger and Mehdi Bozorgmehr, eds., *Ethnic Los Angeles* (New York: Russell Sage Foundation, 1996).

[27]Portes, *The New Second Generation.*

[28]Lawrence J. Friedman, *Identity's Architect: A Biography of Erik H. Erickson* (New York: Scribner, 1999).

[29]Lola Romanucci-Ross and George DeVos, *Ethnic Identity: Creation, Conflict, and Accommodation,* 3d ed. (Walnut Creek, Calif.: Alta Mira Press, 1995).

[30]Nor do these categories address the sensibilities rooted in history and generation in the United States. A Latina can be a person who is the descendant of the original settlers in what is today New Mexico. Her ancestors spoke Spanish—well before English was ever heard in this continent. Her family has resided in this land before the United States appropriated the Southwest territories. She is considered a Latina just as is a Mayan-speaking new arrival from Guatemala who crossed the border last week. Likewise, the term Asian brings together people of highly diverse cultural, linguistic, and religious backgrounds. A Chinese Buddhist and a Filipino Catholic are both considered Asian American though they may have very little in common in terms of language, cultural identity, and sense of self.

[31]See Grace Kao and Marta Tienda, "Optimism and Achievement: The Educational Performance of Immigrant Youth," *Social Science Quarterly* 76 (1) (1995): 1–19; National Research Council, *From Generation to Generation: The Health and Well-Being of Children in Immigrant Families* (Washington, D.C.: National Academy Press, 1998); Ruben Rúmbaut, "The New Californians: Comparative Research Findings on the Educational Progress of Immigrant Children," in Ruben Rúmbaut and Wayne Cornelius, eds., *California's Immigrant Children* (San Diego, Calif.: Center for U.S.-Mexican Studies, University of California, San Diego, 1995); Laurence Steinberg, B. Bradford Brown, and Sanford M. Dornbusch, *Beyond the Classroom: Why School Reform Has Failed & What Parents Need to Do* (New York: Simon & Schuster, 1996); and Carola and Marcelo Suárez-Orozco, *Transformations: Immigration, Family Life and Achievement Motivation Among Latino Adolescents* (Stanford, Calif.: Stanford University Press, 1995).

[32]The data reported are largely cross-sectional panel data—some of it self-reported. Better-quality longitudinal data are now needed to develop a more clear sense of the factors leading to these worrisome trends. See National Research Council, *From Generation to Generation.* Quote from ibid., 159.

[33]Rúmbaut, "The New Californians."

[34]Quoted in Roberto Suro, *Strangers Among Us: How Latino Immigration is Transforming America* (New York: Alfred Knopf, 1998), 13.

[35]See "Wanted: American Physicists," *New York Times*, 23 July 1999, A27. Of course, not all of these foreign-born physics graduate students are immi-

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grants—some will indeed return to their countries of birth while others will surely go on to have productive scientific careers in the United States.

[36]See AnnaLee Saxenian, *Silicon Valley's New Immigrant Entrepreneurs* (San Francisco, Calif.: Public Policy Institute of California, 1999). I am thankful to Professor Michael Jones-Correa of the department of government at Harvard University for alerting me to this important new study.

[37]See, for example, George Borjas, "Assimilation in Cohort Quality Revisited: What Happened to Immigrant Earnings in the 1980s?" *Journal of Labor Economics* 13 (2) (1995): 211–245.

[38]See Waldinger and Bozorgmehr, *Ethnic Los Angeles.*

[39]William Wilson, *When Work Disappears: The World of the New Urban Poor* (New York: Vintage Books, 1997).

[40]Douglas Massey and Nancy Denton, *American Apartheid* (Cambridge, Mass.: Harvard University Press, 1993).

[41]See Dowell Myers, "Dimensions of Economic Adaptation by Mexican-Origin Men," in Suárez-Orozco, ed., *Crossings: Mexican Immigration in Interdisciplinary Perspectives,* 188.

[42]See Richard Murnane, *Teaching the New Basic Skills: Principles for Educating Children to Thrive in a Changing Economy* (New York: Martin Kessler Books, Free Press, 1996).

[43]In one such site, one of our research assistants found that boys sneak out of school at noon to watch pornographic films at a shop across the street from the school. Many of these schools are dilapidated and unkempt. Violence is pervasive. In an elementary school, a young girl was found raped and murdered on school premises. In another, an irate parent stabbed a teacher in front of her students. In yet another school, just days after the Columbine incident, a cherry bomb was set off as one of our research assistants was conducting an interview. In many schools there is tremendous ethnic tension. In one of our sites, students regularly play a game they call "Rice and Beans" (Asian students versus Latino students) that frequently deteriorates into physical violence. In many sites immigrant students report living in constant fear; they dread lunch and class changes as the hallways are sites of confrontation and intimidation, including sexual violence.

[44]An ethnographic study of a number of immigrant schools in Miami found that three factors were consistently present in schools with "cultures of violence." First, school officials tended to deny that the school had problems with violence or drugs. Second, many of the school staff members exhibited "non-caring" behaviors toward the students. Third, the schools took lax school-security measures. See Michael Collier, "Cultures of Violence in Miami-Dade Public Schools," working paper of the Immigration and Ethnicity Institute, Florida International University, November 1998.

[45]These schools affect the opportunities and experiences of immigrant children in several immediate ways. They tend to have limited resources. Classrooms are typically over-crowded. Textbooks and curricula are outdated; computers are few and obsolete. Many of the teachers may not have credentials in the sub-

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jects they teach. Clearly defined tracks sentence students to noncollege destinations. Lacking English skills, many immigrant students are often enrolled in the least demanding and competitive classes that eventually exclude them from courses needed for college. These schools generally offer few (if any) Advanced Placement courses that are critical for entry in many of the more competitive colleges. The guidance counselor–student ratio is impossibly high. Because the settings are so undesirable, teachers and principals routinely transfer out in search of better assignments elsewhere. As a result, in many such schools, there is little continuity or sense of community. Children and teachers are often preoccupied with ever-present violence and morale is often very low.

[46]For a superb but somewhat pessimistic study of how "persistent, blatant racial discrimination" along with inferior schools in high-crime neighborhoods is implicated in the transgenerational decline of West Indian immigrants in New York City, see Mary Waters, *Black Identities: West Indian Immigrant Dreams and American Realities* (Cambridge, Mass.: Harvard University Press, 1999).

[47]Massey and Denton, *American Apartheid.*

[48]See Carola Suárez-Orozco, "Identities Under Siege," in Antonius Robben and Marcelo M. Suárez-Orozco, eds., *Cultures Under Siege: Collective Violence and Trauma* (New York: Cambridge University Press, 2000).

[49]For an overview of recent research on immigration and family ties, see Ruben Rúmbaut, "Ties that Bind: Immigration and Immigrant Families in the United States," in Alan Booth, Ann C. Crouter, and Nancy Landale, eds., *Immigration and the Family: Research and Policy on U.S. Immigrants* (New Jersey: Lawrence Erlbaum, 1996). See also Suárez-Orozco and Suárez-Orozco, *Transformations: Immigration, Family Life and Achievement Motivation Among Latino Adolescents* and Celia Falicov, *Latino Families in Therapy: A Guide to Multicultural Practice* (New York: Guilford, 1998). For an overview of immigrant optimism and achievement orientation, see Grace Kao and Marta Tienda, "Optimism and Achievement: The Educational Performance of Immigrant Youth," *Social Science Quarterly* 96 (1995): 1–19.

[50]See Suárez-Orozco and Suárez-Orozco, *Children of Immigration.*

[51]I concur with Teresa LaFromboise and her colleagues on the need to reconceptualize what they call the "linear model of cultural acquisition." See Teresa LaFromboise et al., "Psychological Impact of Biculturalism: Evidence and Theory," in Pamela Balls Organista, Kevin M. Chun, and Gerardo Marin, eds., *Readings in Ethnic Psychology* (New York: Routledge, 1998).

[52]Margaret Gibson articulates a theoretical argument on immigrant transculturation and a calculated strategy of "accommodation without assimilation" in her study of highly successful Sikh immigrants in California. See Margaret Gibson, *Accommodation without Assimilation: Sikh Immigrants in an American High School* (Ithaca, N.Y.: Cornell University Press, 1988). For a theoretical statement on the psychology of ethnic identity and cultural pluralism, see Jean S. Phinney, "Ethnic Identity in Adolescents and Adults: Review of Research," in Organista, Chun, and Marin, eds., *Readings in Ethnic Psychology.*

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[53]By unilinear assimilation I mean the idea that various immigrant groups have followed roughly a single path of assimilation.

[54]Bounded national projects is a counterpoint to the idea that today transnationalism means, inter alia, that nations are becoming increasingly enmeshed or "unbounded," to borrow Linda Basch's word. Basch, Schiller, and Blanc, *Nations Unbound: Transnational Projects, Postcolonial Predicaments, and Deterritorialized Nation-States.*

[55]See, for example, Nathan Glazer and Daniel Patrick Moynihan, *Beyond the Melting Pot* (Cambridge, Mass.: MIT Press, 1970).

[56]Oscar Handlin, *The Uprooted* (Boston: Little, Brown, 1951).

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Katherine Pratt Ewing

Legislating Religious Freedom: Muslim Challenges to the Relationship between "Church" and "State" in Germany and France

INTRODUCTION

For many Americans and other inhabitants of the modern world, the ideal of living under a democratic government includes the enjoyment of religious freedom. Americans tend to presume that religious freedom can only be ensured by the principle of the separation of church and state, as articulated in two clauses of the First Amendment to the Constitution: "Congress shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof. . . ." The intent of this separation is to make religion a private matter, so that individuals may freely choose whether and how to practice a religion. An absolute separation between church and state is by no means simple to maintain, however. Religion is invariably a social phenomenon (as Emile Durkheim demonstrated in his classic *Elementary Forms of the Religious Life*), and the state inevitably finds itself dealing with religious communities and institutions that transcend the individuals involved. Though the metaphor of a "wall" is the most pervasive trope used to conceptualize the church-state relationship in the United States, in practice the wall is quite porous, and there are many ways in which the government and religious practice are intertwined.[1]

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In the United States, it is only since the 1940s that issues surrounding infringement of religious freedom and questions about whether certain practices represent government "establishment" or support of religion have been subject to scholarly scrutiny and increasing litigation. One of the reasons for the increasing contestation over how to implement this provision of the Bill of Rights has been the changing relationship between minority practices and those of the "mainstream," which until recently was unself-consciously Christian Protestant in orientation. There has been a tremendous expansion of cases claiming that an individual's or group's right to the free exercise of religion has been infringed by the provisions of universally applicable laws.[2] In response to such cases, Congress enacted the Religious Freedom Restoration Act in 1993, which, in turn, was struck down in 1997.[3] On the other side, invocations of the "establishment" clause of the First Amendment have challenged aspects of public practices previously taken for granted as generically spiritual that are now objected to as Christian. While Americans have become more self-conscious about church-and-state issues and about the rights of minorities more generally, there is not an inevitable trend toward secularization of public spaces. Recently, there has actually been a shift away from making public spaces as secular as possible and toward religious pluralism, as in a Supreme Court ruling allowing the display of religious symbols as a free-speech issue and recent efforts to bring the study of religion and the Bible into the classroom.[4]

As in the United States—where minorities have challenged government and other public practices that are tinged with Christian symbolism—many European countries where Muslims are a relatively recent but rapidly growing minority are being forced to reconsider their existing solutions to conflicts over religious freedom. Responses to Islam's challenges, which are often colored in the political arena by popular perceptions of radical Islam and its presumed threat to democracy, have brought issues of the relationship between religion and the state into politics, courtrooms, and newspapers as Muslims—both as individuals and as groups—object to what they see as unequal treatment of their religious practices under existing laws. In the

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process, these challenges highlight the fact that in recent history, European countries have handled issues of religious freedom and secularism and their implementation in public policy and the law in different ways. In consequence, efforts to manage and accommodate Muslim challenges have given rise to different discourses and solutions surrounding the idea of religion and its relationship to the state.

Several distinct issues are often conflated: religious freedom, secularism, relations between church and state, and individual versus group rights. A reconsideration of the relationships between these issues is particularly timely. The principle of church-state separation and the privatization of religion as a matter of the rights of the individual have in the second half of the twentieth century been taken as the paradigmatic solution to the problem of religious difference and diversity. Furthermore, this principle of individual rights has been expanded as a model for handling cultural and ethnic difference more broadly, with often less-than-satisfactory results.

But now, confronted by ethnic conflicts that have erupted in one nation-state after another, scholars and policymakers have sought new solutions that go beyond the idea of individual rights. The philosopher Will Kymlicka, for instance, is among those who have advocated a reconsideration of minority rights in terms of group rights. He has been active in offering suggestions to governments all over the world about how best to handle their minority populations, and he has gone so far as to promote some version of "separate but equal" in his writings and advice to governments.[5] Kymlicka has argued that before World War II, many governments had approached the problem of ethnic minorities by treating them as groups rather than as individuals with respect to the law and public policy. But following the Holocaust, there was a perception that such group-focused policies had contributed to Germany's justification of expansionism, in the name of protecting ethnic Germans in other countries. There was thus a postwar shift away from protecting minority groups and toward emphasizing the human rights of the individual. It was assumed that if the rights of the individual were strictly protected, no further rights needed to be attributed to specific minority groups. Based on this under-

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standing, the United Nations "deleted all references to the rights of ethnic and national minorities in its Universal Declaration of Human Rights."[6]

This shift from minority rights to universal human rights was, in postwar liberal thought, seen as a natural extension of how religious minorities had been protected for centuries.[7] Postwar liberals may have thought that religious tolerance based on the separation of church and state and individual rights provided a good model for dealing with ethnocultural differences—a kind of "benign neglect."[8] But this liberal notion of the church-state relationship in a modern democracy is an abstraction that does not accurately reflect the range of accommodations between church and state that continue to characterize European governments and the vicissitudes of actual practice in the United States. Now that the adequacy of the hands-off approach to ethnic and cultural diversity—the privatization of ethnicity—has been seriously challenged in a global environment where minority unrest is one of the main political concerns of our time, the search for new solutions must include a reexamination of the relationship between church and state as it has actually been played out in specific countries characterized by the presence of large religious minorities.

The classification of church-state systems in Western Europe has traditionally been based on a tripartition into "separation," "concordatarian," and "national-church" systems. It has recently been argued that this classification focuses only on formal aspects and pays insufficient attention to the actual legal powers given to churches and protections afforded to individuals.[9] How the system actually works can best be seen in situations where the status quo has been challenged, since such challenges expose implicit understandings and accommodations that may not even be consistent with explicit doctrines and ideologies concerning the relationship between church and state. Conflicts over the status quo are precisely what many countries in Europe are experiencing in recent decades, as they struggle to accommodate and/or assimilate large numbers of Muslims who were encouraged to come to these countries as unskilled labor in the 1960s when economies were thriving and labor was in short supply.

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The following discussion focuses on challenges Muslim communities have raised to existing practices and law in Germany and France. Germany has a large Turkish immigrant population (2.4 percent of the population), and France has a large number of Muslims, primarily from the former colonies of Algeria and Morocco (1 percent of the population).[10] I address the question of what these Muslim challenges and the array of responses to them reveal of German and French discursive practices concerning the idea of religious freedom, the issue of individual versus group rights, and efforts to rethink the relationship between religion and state in a modern democracy.

MUSLIM CHALLENGES

Muslim challenges and responses tend to revolve around a few salient issues. One of these is the freedom of Muslim communities to practice Islam in publicly visible ways. In many cases—such as building freestanding mosques that look like "real" mosques or broadcasting the call to prayer with loudspeakers—Muslims claim that existing laws and regulations are discriminatory, because they permit Christian practices but ban what Muslims claim to be analogous Muslim practices in public arenas. Such conflicts represent a challenge to implicit Christian Protestant presence in public spaces. Until recently, for example, there were no mosques in Berlin that were recognizable as such from the outside. Though there are actually many mosques, they are virtually invisible, being renovated spaces in old factories and warehouses.[11] The first "real" mosque to be constructed by a Turkish organization in Berlin—that is to say, a domed structure with minarets—is currently under construction, sponsored by Diyanet Işleri Türk Islam Birligi (DITIB), an organ of the Turkish government that promotes a moderate Islam. Builders of the mosque faced considerable obstacles. Arguments against the mosque included objections that such a building would disrupt the Berlin skyline, being a constant and permanent reminder of the presence of foreigners in the heart of Germany. People were also concerned that Muslim practices associated with the mosque—such as the call to prayer—would disturb the peace.

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In recent years, Muslims have been increasingly vocal in their challenges to regulations banning public broadcast of the call to prayer. They have argued that the public call to prayer is analogous to the church bells rung from the steeples of Christian churches. The fact that construction on the Berlin mosque has proceeded indicates that a permanent Muslim presence is finally being taken seriously. In Berlin, compromises on the height of the minarets and the volume of the call to prayer were reached, and construction has gone ahead. Similarly, in France, when a large mosque was to be built in Lyon, a compromise was reached after a decade of legal wrangling between the Muslims building the mosque and the city limiting the height of the mosque's minarets and banning the *muezzin*'s amplified call to prayer. The mosque finally opened in 1994.[12]

Similarly, Muslim efforts to get German universities to provide prayer rooms for students, necessary for those who wish to adhere to the religious requirement of prayer at five specified times during the day, have been met with resistance but not with cogent arguments against them. In most cases, as in Berlin's Free University, requests from the Muslim community have not been refused outright, but have been met instead with inaction and silence. In other words, there has not been ideological justification or invocation of legal principle to justify the refusal, but rather bureaucratic delay.

Often a universally applicable law, such as a ban on polygamy or compulsory school attendance, may be challenged by Muslims on religious grounds, thereby forcing a reconsideration of basic laws and constitutional issues. Challenges to two of the most salient existing legal arrangements in recent years follow:

- The freedom of Muslim women and girls to cover themselves in all circumstances has generated direct conflict between the principles of secularism and religious freedom in several countries, not only in such western nations as France and Germany but even in Turkey, a Muslim-majority, but secular, country.
- Religious education in public schools and government support for confessional schools marks a key difference between, on the one hand, German approaches to the relationship between

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church and state and, on the other hand, French (and American) constitutional and ideological stances. As an aspect of France's "laicism"—a term that today is used, at least theoretically, to mean an absolute separation of church and state—France keeps religious education out of the schools. Germany's situation is quite different. Confessional instruction for (Lutheran) Protestants, Catholics, and Jews has not only been a part of the public-school curriculum, in one way or another, in most German states, but is actually mandated by Germany's *Grundgesetz*, or Basic Law. It has also been hotly contested on several grounds. Groups of Muslims have struggled to attain an analogous privilege in public schools and equivalent support for their own schools and organizations, but they have met with considerable resistance from various segments of the German government. Muslim arguments have both directly and indirectly challenged at their core German government policies concerning the relationship between church and state.

The proliferation of such conflicts suggests the need not only for an explicit reexamination of the concepts of religious freedom, secularism, and the separation of church and state; we must also ask how these negotiations are played out in terms of individual and group rights, and how governments determine when laws should be universally applicable and whether special consideration should be given to groups or individuals.

CHURCH AND STATE IN FRANCE AND GERMANY

Sweeping statements are often made about the total separation of church and state in France, going back to the late eighteenth century. Because a key ideological focus of the French Revolution was the triumph of rationality and reason over traditionalism and religion, the predominant sentiment over much of this time was anticlericism, a policy of containment of the power and authority of the Catholic Church. The 1791 Declaration of the Rights of Man and the Citizen and the 1791 Constitution guaranteed, respectively, freedom of belief and freedom of religious observance.[13] But in practice these guarantees bore little resemblance to the guarantees enacted in the American

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Bill of Rights. Before the twentieth century, the French system of laicism actually involved direct state control over the Catholic church that began with a concordatarian arrangement with Rome under which the state (in the interests of maintaining control) assisted the Catholic churches and paid clergy salaries. It was only in 1905 that France proclaimed a complete separation of church and state, thereby in principle making religion a private matter. Financial aid to churches officially ended, at least in most regions of France, and freedom of public worship was guaranteed. But in practice, it is only in the twentieth century that strident anticlericism has actually abated, and the French government has had many dealings with and given formal recognition to the various religious communities of Catholics, Protestants, and Jews, basing their interactions on the Catholic model of hierarchical authority and territorial organization.[14] Official neutrality through separation of church and state has in many respects given way to plurality.

We can see this in France's efforts to create a satisfactory relationship with its Muslim population. With the large influx of Muslims (who now constitute 1 percent of those who claim religious affiliation in France, compared with 15 percent being church-attending Catholics, 2 percent Protestants, and 1 percent Jews),[15] the government has had difficulty responding to the needs of various Muslim communities because Muslims lack the single hierarchical structure characteristic of the other religious groups. France's interior minister in the mid-1990s, Charles Pasqua, who bore much of the responsibility for managing the highly visible and controversial expressions of political violence involving specific radical groups of Muslims at that time, felt that the lack of structure in the Muslim community was dangerous.[16] Expressing similar sentiments, members of the French government have articulated the wish that the Grand Mosque of Paris would function as a "Muslim Vatican."[17] The government often uses the Imam of this mosque, who represents what the government sees as a moderate Islam, as a spokesperson for the Muslim "community." But when controversies arise involving Koran classes or the visible expression of Islam through the wearing of a head scarf, the principle of strict secularism in government spaces returns to center stage.

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Germany, too, is accustomed to dealing with a central, hierarchically organized church administration, even among its large numbers of Protestants, and rights are accorded to religious groups rather than individuals. In contrast to France's laicism, churches in Germany are public-law corporations and can be subsumed under the category of concordatarian systems, in which there is agreement between the state and the various established religious communities.[18] Germany's Basic Law calls for a "church tax," which is levied on all individuals who claim religious affiliation with one of the established churches. The German government, in turn, allocates funds for church-sponsored schools and hospitals, the training of religious-education teachers for religious instruction in public schools, and other social services provided by the churches.

The current system is the outcome of an intense struggle during the nineteenth century between Catholics and Protestants. As in France, Catholicism was associated with traditionalism and backwardness. But in Germany, Protestantism was a powerful force, rhetorically associated with rationality (as in Weber's classic essay, "The Protestant Ethic and the Spirit of Capitalism") and with the "true" German national character. In the late nineteenth century, nationalist intellectuals saw the state and its power as an important vehicle for modernizing the population and containing the Catholic clerical system. Policymakers believed that compulsory education in secular, confessionally mixed schools would be the best means by which to integrate the two religions while "recasting an ignorant and apathetic population into a respectable, responsible citizenry."[19]

Under Otto von Bismarck, efforts to contain the Catholic Church resulted in escalating conflict between Catholics and Protestants, played out in schoolrooms and churches. One outcome of this Catholic resistance was the emergence of a wide range of Catholic organizations, with an effective overall organizational structure.[20] Protestant efforts to resist Catholicism also stimulated an overarching organizational structure, the Protestant League. In a foreshadowing of church ideology under Nazism, this group depicted the Catholic spirit as alien to German character. By a similar logic, Judaism eventually became the prime target, the quintessential Other in this process

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of consolidating German nationalism. Today, of course, Judaism has been recast as an important element of the German nation and has an important place in church-state institutional arrangements. But echoes of German nationalism and of guilt over the Holocaust still resonate loudly in Germany today, and there is considerable fear—coming from Muslims and liberal Germans alike—that the Muslim has supplanted the Jew as the threatening Other within. These fears can be seen in the debates surrounding the establishment of new policies toward Muslim groups and practices. It is in these institutional and legal settings that Muslim challenges and demands for public recognition, space, and support have occurred.

FREEDOM TO WEAR A HEAD SCARF

The Muslim head scarf has been a highly visible political symbol in all Muslim-majority countries, its position as a focus of contestation defined in part by what is meant by secularism or laicism as a state policy. The meaning of the head scarf has been shaped by the fact that, for many modern secularists, it has been a symbol of the oppression of Muslim women, while for politically active Islamists the head scarf as an element of a pan-Islamic ideology signifies rejection of Western domination and secularism and the return to a properly ordered Muslim society. Its contemporary meaning has thus been constituted in part out of the politics surrounding Islamization and the threat that many secularists and secularist governments feel as Islamization becomes increasingly visible as a social and political force. As Islamists have moved into positions of power in many Muslim-majority countries, the head scarf has been increasingly linked to religious freedom and state authority wherever the imposition of Islamic law has included the mandatory covering of women.

But laicism as a state policy may impose similar constraints on religious freedom.[21] Both Turkey and France are officially laicist, and in each case the authority of the state to control women's dress has been a controversial issue, just as under Islamist regimes. But in these cases, it is the women who have insisted on wearing a head scarf who have been subject to the

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controlling authority of the state. In Turkey, the imposition of laicism on what was characterized as a backward, superstitiously religious population was one of many top-down efforts at social transformation. Since the establishment of the Republic of Turkey as a laicist state in the 1920s, women have not been permitted to enter state-controlled schools to practice professions such as medicine or law with a head covering in place. Controversy surrounding this prohibition became a visible issue in the 1980s and has continued to be so as growing numbers of women have explicitly challenged state authority by refusing to remove their head scarves when they attend school, doing so in the name of democracy and religious freedom.

In France, laicism has involved similar constraints on the freedom of religious practice. As in Turkey, state institutions such as public schools are to be rigorously secular. With respect to Muslims, the French government has endorsed the principle that the absolute separation of church and state means that individuals and groups are forbidden to manifest their religious practices and beliefs in government settings such as public schools. The result has been controversy over the permissibility of head scarves for Muslim girls while in school. In a well-publicized dispute that began in 1989, three teenage Muslim girls living in a town north of Paris challenged what they defined as an infringement of their religious freedom when they were expelled from their high school because they refused to remove their head scarves (the Arabic *hijab*). The argument used by French authorities to justify their position draws on their Enlightenment-based perception of the mission of the public schools being to neutralize religious difference while imbuing students with French civilization.[22] In 1994, in response to continuing controversy over the issue, the French education minister issued a directive that head scarves would not be permitted in state educational institutions. This caused consternation not only for Muslims but also for Jews, who had up until that point been permitted to wear yarmulkes in state schools without question.[23] But the rule seems to have left room for wearing a yarmulke or a crucifix, while barring the head scarf for being "outrageous, ostentatious, or meant to proselytize."[24]

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The Ministry of the Interior viewed the head scarf as a threatening assertion of Islamist fundamentalism, threatening because it was seen as a symbol of fanaticism and the submission of women.[25] Muslim leaders responded by taking the issue to the courts. In France as well as in Turkey, this controversy highlights a key difference between the principles of laicism and religious freedom. In this case, the government used the principle of laicism with respect to groups it perceived as threatening, while allowing individuals in other, more dominant groups (Jews and Christians) freedom of religious practice in the same setting.

Although Turkish-German covered women frequently describe Germany as a place where Muslims are freer to practice Islam than in laicist Turkey, similar controversies have arisen in Germany. There, the strict separation of church and state in the French sense does not exist, and the state emphasis is on religious freedom and tolerance and the right to a religious education. Thus far, most specific legal cases addressing this issue in Germany have involved Muslim girls being forced to participate in compulsory gym and swimming classes in which wearing a head scarf would be impossible, and these have generally been resolved by rulings that exempt covered Muslim girls from such compulsory activities. But the courts have been uncertain about how to respond. One court, for instance, ruled that Muslim immigrants should be pressured to adapt, while another court emphasized the need for these women to protect their identities.

Although Muslim girls and women in Germany have not been prevented from wearing head scarves in the classroom as they have in France and Turkey, there have recently been cases of Muslim women who lost their jobs as public-school teachers because they insisted on wearing a head scarf in the classroom. In a case that has received considerable attention since it first arose in 1998, a young Afghani refugee, Fereshta Ludin, was denied a position as a public-school teacher because she refused to remove her head scarf.[26] When during her teacher training Ludin was first assigned an internship in an elementary school and parents objected to her head scarf in the classroom, the culture minister of Stuttgart decided that since the state has a

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monopoly on teaching positions, it could not refuse to place her.[27] But the issue came up again when she applied for a regular teaching position, and after considerable debate, the culture minister in the state of Baden-Württemberg decided against her, on the grounds that wearing a head scarf is not a religious duty for Muslim women and that its contested nature within Islam makes it a political symbol that the state should not endorse. Several reasons have been put forward to justify the state's refusal to allow Ludin to teach: Since she would be a civil servant, she has a constitutional duty to act as a neutral and objective representative of the state. Parents entrust their children to the state in sending them to school, and since children are especially vulnerable in the classroom, being exposed to a teacher wearing a head scarf would violate the children's religious freedom. Further, since the practice of wearing a head scarf is a controversial and politicized issue among Muslims themselves, a policy tolerating it in the German civil service would send a political message that the state had taken sides, "supporting a side linked in the public mind with cultural exclusivism, the repression of women, and intolerance."[28] Many groups welcomed the decision because "it would promote the integration of Islamic young people into our society."[29]

On the other side, it has been argued that disqualifying a woman for a teaching position because of her head scarf would violate her right not to be discriminated against on religious grounds and the right not to be subjected to a religious test for a government position.[30] Some also challenged the notion that the school system is religiously neutral, since the state sponsors courses in religious instruction and allows the wearing of crucifixes in the classroom.[31]

Writing in the German weekly *Die Zeit*, Dieter Grimm, a former justice of the federal constitutional court, pointed out that Germany's Basic Law is based on the rights of the individual to freedom and self-determination, and that these rights can be interpreted to protect the autonomy of different social subsystems and all aspects of their political, economic, and cultural ways of life.[32] In this statement, Grimm has translated the principle of individual rights to one of group rights. From his perspective, the experiences of national socialism have made

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Germans even more sensitive to these rights. According to Grimm, however, the compulsion to adapt to a German way of life and the principles of "fundamentalism" are two parallel extremes, both of which must be avoided. Because fundamentalism is the opposite of tolerance, it must be banned from the classroom.

In making this point, it seems to me, Grimm has downplayed the issue of individual rights, focusing more on the threat posed by fundamentalists as a group. Although he does not extend his discussion to the permissibility of the head scarf in the classroom, the issue from his position would seem to come down to whether wearing a head scarf is a manifestation of a group activity or merely an expression of an individual's personal religious observance. But by focusing on "fundamentalism" as the practice of a cultural minority, it is not difficult to reason from Grimm's position against the permissibility of "fundamentalism" in the public schools to the argument that the head scarf must be banned. France's Ministry of the Interior argued that the head scarf is a symbol of fundamentalism. In the German case of Fereshta Ludin, the argument was similarly made that since the scarf does serve as a political symbol, its signaling effect, rather than the wearer's personal convictions, must be the deciding factor.[33] Grimm has expressed the opinion that this issue can only be resolved at the level of constitutional law and has pointed out that the German Basic Law was not written with modern "multiculturalism" in mind.[34] The Muslim presence thus clearly poses a constitutional challenge for Germany.

MUSLIMS AND RELIGIOUS EDUCATION IN THE PUBLIC SCHOOLS

Despite the principle of a strict separation of church and state in France, there have been some efforts to bring Muslim activities within the purview of the government. For example, the Paris mosque was granted a lucrative government contract for butchering meat according to Muslim law. This step was taken chiefly because the mosque is moderate in orientation; the government would like its leader to be able to act as a spokesperson for the Muslim community at large, thereby displacing Muslim groups that it regards as radical or fundamentalist. But

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other Muslim groups protested that the government was showing favoritism to one group, forcing withdrawal of the contract.[35] The French government also supplies Muslim chaplains for prisons and the military. Like the United States, however, France does not sponsor religious education within the schools. Thus, the idea of delivering such education to Muslim children has not taken shape as an issue for Muslims in France.

Because Germany does offer such religious instruction, the issue is one of central concern to Germany's Muslims and has had a profound influence on the politics of competing Muslim organizations as well as on the everyday lives of Muslims. According to Eckhard Nordhofen, head of central development in the German Bishops' Conference, "The constitutional law of the Federal Republic addresses religious freedom. Religious freedom is a human right. No compulsion [to practice religion] may be imposed, which is a negative religious freedom. But there is also positive religious freedom. Religion classes are a result of a positive religious freedom."[36]

Within the framework of German law, groups have been pushed to fulfill specific criteria in order to qualify as religious organizations. Complaints are common within Muslim communities that the government has not honored existing laws and regulations when it comes to giving official status to Muslim organizations. For example, the director of a Muslim preschool that had recently received local government funding complained that her organization had been ignored for years before being able to force the government into granting the school the official status that would entitle it to government funding.[37] This example is just one of many instances of politicians and officials either stalling or finding a technical rationale for keeping at bay what many feel is a threatening possibility: that Muslim religious education will promote radical fundamentalism.

Despite the behind-the-scenes political maneuvering that has slowed government support of Muslim schools and the integration of Islam into the school curriculum, many people feel that it is important to integrate Muslim organizations into the system. While in Berlin, I spoke informally with German professionals and academics, several of whom expressed the view that it was better to have Islamic education in the schools,

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where it is visible, than to have it happen in "some garage" where fanatics could influence young Muslims in dangerous ways. For these people, government support entails government oversight.

But the key question for politicians, the courts, and the various Muslim organizations is which group should be authorized to set up an Islamic curriculum and train teachers. In a case decided by the Berlin Administrative Court, the Islamic Federation of Berlin was the plaintiff in a suit brought against Berlin's School Senate Administration in which the federation demanded permission to conduct religious education in the public schools.[38] The federation claimed that it had been a registered organization (*Verein*) since 1980, functioning as an umbrella organization for twenty-five member organizations.

As stated in the judgment, the Islamic Federation had first applied for permission to conduct religious instruction in 1980. The application was denied by the School Senate on the grounds that the plaintiff acted not as a religious community (*Gemeinschaft*) but only as a religiously oriented association (*Verein*). Over the course of the following twenty years, the federation repeatedly rewrote its charter, reapplied, and was denied, the process culminating in appeals to the administrative court in 1987, 1993, 1997, and again in 2000. The grounds for the negative decisions through 1997 were made on the argument that the plaintiff was not a religious community.

It was argued that Islam is characterized by different organizational structures, different legal schools based on different legal collections (*fatawa*) and strong sociocultural forms. The resulting assemblage of groups has only the Koran as a common basis. "Otherwise, there are so many differences that they cannot be spoken of as being a single unified religious conviction. It is not accurate to claim a common religious consensus solely on the basis of the Koran and Sunna while allowing the member organizations to continue holding different beliefs in other respects."[39]

The ruling also included the following points, which articulated German misgivings about an organization that many viewed as "fundamentalist":

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- One of the participating member organizations was not a religious community and, therefore, the Islamic Federation constituted a secular interest group.
- The participating organizations' 1,127 members were only a minority of Berlin's 140,000 Muslims, according to the 1987 census.
- Religious differences between the member organizations and other believing Islamic orientations, and thus the distinctiveness of this organization, had not been made clear.

In response, the federation argued that it did meet the definition of a religious community as specified in the school laws (*Schulgesetzes*) for Berlin. Furthermore, it asserted, to the extent that Islam is not a homogenous religion, the same holds for Christian religious communities, which are also not homogeneous. Finally, the federation pointed out that its teachers were experienced in religious instruction, had demonstrable theological degrees, and were required to be tolerant in their instruction of Islam.

What are the issues embedded in this ruling? A highly charged question is whether the goals of the Islamic Federation are "really" political and not "just" religious. The ruling includes a reference to one of the member organizations of the Islamic Federation not being religious. According to a German lawyer who was working on the most recent appeal when I spoke with him in November of 1999, the offending member was actually a political group.[40] The literature on Islam in Europe frequently depicts Islamist groups operating freely on German soil, having left Turkey because of political repression, and portrays some of these groups as having political aspirations to replace Turkey's secularist government and to propagate Islamic fundamentalism. This fear is further reinforced by the idea that Islam is presumed to make no separation between church and state, in contrast to post-Enlightenment Christianity. In an interview for *Die Zeit*, a so-called representative of the Turks [*Vertreter der Turken*], Kenan Kolat, said, "Islam today is still of a more political nature than is Christianity, which is strongly secularized. Islam much more strongly shapes everyday life. If an

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organization misuses Islam for its Islamist political goals, we are against its being able to give religious instruction in the schools. For us, the Islamic Federation is such an organization."[41]

An important element of the context of this case is the wrangling between rival umbrella organizations of Muslims. These rival organizations received no direct mention in the ruling, but played a significant role in how the contest has developed over the years. A rival organization to the federation in Berlin of comparable size (in terms of the number of mosques under its control) is DITIB, which has direct and overt ties to the Turkish government through Turkey's Directorate of Religious Affairs (*Diyanet*) and controls all mosques and religious schools in laicist Turkey. The Islamic Federation, in contrast, has close ties to Milli Görüş, which is characterized by Turkish officials as well as by the German media as a "fundamentalist" organization, originally closely linked to Turkey's Islamist Welfare Party. The Welfare Party (renamed the Virtue Party after being banned in January of 1998) controlled the Turkish government for a short time and worked to replace laicism with a policy more supportive of Islam. Ali Kılınç, the director of DITIB in Berlin and thus a Turkish government employee, felt strongly that his organization, representing a moderate, progressive Islam, should be given authorization to teach Islam in Berlin's schools instead of the Islamic Federation.[42]

In January of 2000, the 1997 decision against the Islamic Federation of Berlin was overturned. The federation was given the status of a religious organization (*Religiongemeinschaft*), and the Berlin School Senate was ordered to authorize the federation to offer religious instruction in Islam to Muslim schoolchildren. According to news reports of the decision, it seems that the German government is still concerned about the lack of integration of the Muslim community, split as it is into a number of competing umbrella organizations. On the other hand, at least one journalist has suggested that the government has focused excessively on this issue as a pretext for doing nothing about Islamic education.[43]

The decision, though targeted specifically at Islamic religious instruction, has broader implications for the issue of religious

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instruction in the schools. It came in the midst of a hot debate in the press and in the Berlin government about the future direction of religious instruction. In Berlin, religious instruction in one of the officially recognized religions—Catholicism, Lutheran Protestantism, and Judaism—was voluntary for elementary-school children, the alternative being a study hall. During the winter of 1999–2000, Berlin's new senator for education (a member of the center-right Christian Democratic Union) announced that he planned to push for compulsory religious instruction, an announcement that generated controversy and stimulated a powerful response from a disparate array of individuals and organizations, which formed an alliance to resist this move.

Many people took the opportunity to argue that religious instruction should be replaced with some form of "ethics" course, a proposal that had been debated on and off for many years and was influenced in part by the feeling, particularly strong among many former East Germans, that state sponsorship of religion is inappropriate. An article in *Die Zeit* shortly after the court ruling about the Islamic Federation pointed out:

> It forces the Senate to act indirectly against the prevailing spirit of the times: while many local school politicians and the Pedagogical Front argue against the supposedly dated influence of the churches in school instruction and seek to replace their influence with an non-confessional ethics class, the Berlin Senate must now go in the opposite direction. It must introduce religion classes of all confessions as a regular school subject with grades and trained teachers.[44]

In contrast to Germany's other states, where religion is a proper instructional subject, the organization of instruction in Berlin had until this point been entirely under the control of the official religious organizations. Throughout the fall of 1999, the two issues—ethics versus religious instruction in the schools, and which organization should represent Islam to Muslim schoolchildren—had been brewing as discrete controversies with their own distinct histories, the first involving the merging of East and West Berlin and a rising proportion of the German population that lacked any church commitment, and the second involving the rising discontent among the ever-growing Turk-

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ish community about unequal treatment in the schools. The presence of increasingly vocal Muslims has thus changed the terms of the ethics debate.

CONCLUSION

In using the example of religious difference to cast the United Nations Universal Declaration of Human Rights solely in terms of individual rights—based on the premise that group affiliations are a private matter outside of state purview—it is clear that its authors were mistaken in their understanding of how religious communities have interacted with the state in Europe. Consideration of actual practices in Germany and even in France, which has had the most sharply articulated rhetoric of separation since 1905, indicates that these governments have actually dealt with religious communities (even including Protestants) as corporate groups. Muslims have threatened the status quo not, ironically, because they have group expectations, as an American observer who regards religion as an individual private matter might expect, but because there is no single clear organizational structure that subsumes all Muslims. The German setup encourages umbrella organizations to vie for official status and recognition. Interestingly, the German difficulty in handling Muslim education in school does not seem to have stimulated the question of why a single organization must control all religious education curricula and teacher training in the schools. An alternative solution might be to give parents a choice of school, so that if they do not agree with the orientation of a religious teacher in one school, they could request a transfer to another.

The case of France suggests that this solution or some other has not emerged in Germany because equal treatment of each sect or organization is not the critical concern of those who have obstructed the implementation of an Islamic curriculum. Though France lacks the program of religious education in public schools that Germany has, the French government also has been frustrated by the lack of a single official head of a Muslim "church." Both governments are afraid of Muslim ex-

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tremists and are seeking modes of surveillance of all Muslims that do not infringe too blatantly on the rights of individuals.

Some Germans have accused the Milli Görüş, with which the Islamic Federation is affiliated, of practicing "dissimulation," as certain communities of Shi'a Muslims have done at various points in their history—indicating a fear of what this organization is "really" up to. Much of the controversy centers around women's dress. Struggles over the head scarf in France and Germany are couched in somewhat different rhetorics, but in debates in both countries can be heard views valorizing assimilation that echo German and French nationalism and an equation of progress and rationality with northern European cultural practices. In discourses going back to the nineteenth century, the head scarf has been seen as a sign of the traditional Muslim oppression of women. This was closely linked with the idea that traditional Muslim leaders strive to control their communities autocratically through their interpretation of Islamic law, in which there is no separation of the political, the social, and the religious. If the state were to recognize such a community, it would create a direct conflict between individual human rights and the right of the group to control its members. But such symbolic associations do not hold for most Muslim communities, even for those whose women wear head scarves. In fact, covered women active in Milli Görüş argue for their rights in terms of freedom of choice and the principles of democracy. This cannot be just "dissimulation," since they enact these principles in their own lives, becoming well-educated and publicly active, in contrast to stereotypes of the covered woman as an oppressed victim.

The presence of large Muslim populations challenges church-state arrangements, not because Muslim goals are so different from those of other religious communities, but because European governments do not trust that they respect individual rights and the principle of religious freedom. Muslims may reject laicism without rejecting either the individual rights of members of their own particular community or the group rights of other communities. Their presence in European societies should help us disentangle concepts about religious freedom,

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individual rights, and the relationship between church and state that are often confused in popular discourse.

ACKNOWLEDGMENTS

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ENDNOTES

[1]Though the idea of the separation of church and state can be traced back to Roger Williams in the 1630s (see Roger Williams, *The Bloody Tenant Yet More Bloody* [London: G. Calvert, 1652]), the concrete image of a "wall" to characterize the separation of church and state was articulated by Thomas Jefferson in 1802 and has continued to be elaborated throughout the twentieth century. See Ben Voth, "A Case Study in Metaphor as Argument: A Longitudinal Analysis of the Wall Separating Church and State," *Argumentation and Advocacy* 34 (1998): 127–134. On the idea of porousness, see James Kilpatrick, "A Porous Wall of Separation," *Nation's Business* 72 (1984): 5.

[2]Examples include *Employment Division of Oregon* v. *Smith*, 494 US 872 (1990), which challenged a law prohibiting the use of certain drugs that are part of a group's religious practice.

[3]See *City of Boerne* v. *Flores*, 117 S. Ct. 2157, 138 L. Ed 2nd 624 (1997). Among the grounds for the decision were the determination that the act went beyond the supposed intent of "restoring" religious freedom and appeared to attempt to change the substance of constitutional protections, thereby exceeding the power of Congress. It also imposed a heavy litigation burden on the states and curtailed their power to impose general regulations. While the act was in effect, it had been argued that it "forces every level of government to give special consideration to the ritualistic minutiae of every sect and belief, except where there is a compelling state interest." Rudra Tamm, "Religion sans Ultimate: A Re-examination of Church-State Law," *Journal of Church and State* 41 (1999): 12.

[4]The ruling on the displaying of religious symbols followed a 1995 Supreme Court ruling that upheld the right of the Ohio chapter of the Ku Klux Klan to erect a cross during the Christmas season in a public area of Columbus. 515 US 753 (1995). See Frances A. McMorris, "Legal Beat: Local Governments Relax Ban on Religion in Holiday Displays," *Wall Street Journal*, 26 December 1995, B3. On religious education in schools, see, for example, Samantha Peterson, "School Board Hopeful Wants Bible Course," *The Herald-Sun*, Durham, NC, 7 April 2000, C1.

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[5]G. Pascal Zachary, "A Philosopher in Red Sneakers Gains Influence as a Global Guru," *Wall Street Journal*, 28 March 2000, B1, B4.

[6]Will Kymlicka, *Multicultural Citizenship* (Oxford: Oxford University Press, 1995), 3.

[7]Ibid.

[8]Nathan Glazer, *Affirmative Discrimination: Ethnic Inequality and Public Policy* (New York: Basic Books, 1975), 25.

[9]Silvio Ferrari, "The Emerging Pattern of Church and State in Western Europe: The Italian Model," *Brigham Young University Law Review* (1995): 421–437.

[10]Figures are from the CIA's *World Factbook* web site, <http://www.odci.gov/cia/publications/factbook>. "Muslims" account for 1.7 percent of Germany's population, while a large number of Germans, 26.3 percent, are unaffiliated or "other." In contrast to the CIA, it is striking that Germany's Federal Statistics Office does not list Muslims as a separate category on its web site, <http://www.statistik-bund.de>, though the number of Jews, which is smaller than the number of Muslims, is listed.

[11]See Ruth Mandel, "A Place of Their Own: Contesting Spaces and Defining Places in Berlin's Migrant Community," in *Making Muslim Space in North America and Europe*, ed. Barbara Metcalf (Berkeley: University of California Press, 1996), 147–166.

[12]Milton Viorst, "The Muslims of France," *Foreign Affairs* 75 (1996): 81.

[13]See Philip Dawson, "Declaration of the Rights of Man and of the Citizen," in *Historical Dictionary of the French Revolution, 1789–1799*, ed. Samuel F. Scott and Barry Rothaus (Westport, Conn: Greenwood Press, 1984), 301–303; Dawson, "Constitution of 1791," in ibid., 236–238.

[14]Rik Torfs, "Church and State in France, Belgium, and the Netherlands: Unexpected Similarities and Hidden Differences," *Brigham Young University Law Review* (1996): 958.

[15]Ibid., 950.

[16]Viorst, "The Muslims of France," 95.

[17]Ibid., 80.

[18]Ferrari, "The Emerging Pattern of Church and State in Western Europe," 426.

[19]Helmut Walser Smith, *German Nationalism and Religious Conflict: Culture, Ideology, Politics, 1870–1914* (Princeton, N.J.: Princeton University Press, 1995), 39. Much of the following summary is based on Smith.

[20]Ibid., 50.

[21]Jean Bauberot, in his article "Laïcité, Laïcization, Sécularisation," in *Pluralisme Religieux et Laïcités dans l'Union Européenne*, ed. Alain Dierkens (Brussels: Editions de l'Université de Bruxelles, 1994), 9–17, has articulated a useful distinction between "secularization" and "laicization." Laicization can be characterized as a reduction of the legal position of religion and its subordination to nonreligious functionaries, while secularization is a reduction in the social importance of religion.

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[22]Viorst, "The Muslims of France," 85.

[23]Martina Doering, "Franzosen streiten um das Kopftuch," *Berliner Zeitung*, 17 January 1995.

[24]Viorst, "The Muslims of France," 86.

[25]Ibid.

[26]Merle Hilbk, "Im Glauben eine Heimat finden," *Die Zeit*, 1998, No. 31, <http://www.archiv.zeit.de/daten/pages/199831.ludin_.html>. This article is based in part on an interview with Fereshta Ludin.

[27]Ibid.; William Barbieri, "Group Rights and the Muslim Diaspora," *Human Rights Quarterly* 21 (4) (1999): 922. Barbieri has insightfully presented and analyzed this controversy from the perspective of group rights.

[28]Barbieri, "Group Rights," 922.

[29]Michael Lüders, "Ich bin doch kein Alien," *Die Zeit*, 1998, No. 31, <http://www.archiv.zeit.de/daten/pages/199831.kopftuch1_.html>. My translation.

[30]Barbieri, "Group Rights," 920.

[31]Ibid., 922.

[32]Dieter Grimm, "Das Andere darf anders bleiben: Wie viel Toleranz gegenüber fremder Lebensart verlangt das Grundgesetz?" *Die Zeit*, 17 February 2000, No. 8, <http://www.archiv.zeit.de/daten/pages/200008.toleranz_.html>.

[33]Hilbk, "Im Glauben."

[34]Grimm, "Das Andere darf anders bleiben."

[35]Viorst, "Muslims in France," 93.

[36]Echhard Nordhofen, "Bei uns bleibt Er tot," *Die Zeit*, 22 December 1998, <http://www.archiv.zeit.de/daten/pages/199853.t_religion_.html>. My translation.

[37]A director of Islamischer Frauverein, interview by author, Berlin, 23 November 1999.

[38]Verwaltungsgeericht Berlin, *Islamischer Föderation* gegen *das Land Berlin*, VG3 A 2196.93 (19 December 1997).

[39]My translation.

[40]Ralph Poscher, conversation with author, Berlin, 9 December 1999.

[41]Max Thomas Mehr, "Schulfrei für alle Götter?" *Die Zeit*, 19 November 1998, <http://www.archiv.zeit.de/daten/pages/199848.streitgespraech_.html>. My translation.

[42]Ali Kılınç, interview by author, Berlin, 23 September 1999.

[43]Martin Spiewak, "Das Recht auf Unterricht," *Die Zeit*, 2 March 2000, <http://www.archiv.zeit.de/daten/pages/200010.islamunterricht_.html>.

[44]Ibid. My translation.

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Unni Wikan

Citizenship on Trial: Nadia's Case

ON OCTOBER 3, 1997, Norwegians awoke to the news that Nadia, a Norwegian citizen, eighteen years old, had been kidnapped by her parents and brought to Morocco, where she was being held captive. The purpose reportedly was to have her married by force. It was Nadia herself who managed to sound an alarm by way of a phone call to a fellow employee at a store where she worked and where she had failed to show up on Monday, September 1, giving no notice. She was in a terrible state, telling how she had been drugged, beaten, and forced into a van that had transported her, in handcuffs, with her family to Morocco. Stripped of her passport, she was now being held in her father's house, and she was desperate to be set free.

Her colleague contacted their boss, who went straight to the police; when the police were slow to take action, he contacted the Ministry of Foreign Affairs.[1] They acted expeditiously. The Norwegian ambassador in Morocco was informed and a rescue plan was conceived. The ambassador would try to negotiate with Moroccan local authorities and with Nadia's father for her release.

There was every reason for Norway to engage itself, for not only was Nadia a Norwegian citizen, but her parents were too. Her father had come to Norway in 1971, at the age of twenty, and had held Norwegian citizenship since 1985—as had her

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mother, who joined him in 1978. Norway does not recognize dual citizenship. Thus, from the point of view of Norway, the judicial statuses of Nadia and her parents were clear. Also, the crime, if so it was—and at this point there was much to indicate that a crime had been committed—had been perpetrated on Norwegian soil.[2] Hence, there was no question about Norway's right and duty to investigate the case and try to work out a solution.

But there was a hurdle, and it concerned citizenship. That one state does not recognize dual citizenship matters little as long as another state with which a citizen is affiliated does, and Morocco did. This had serious consequences, especially for Nadia. A Norwegian adult, she was transformed into a Moroccan child—for the legal age in Morocco is twenty, not eighteen, as in Norway. Hence, she came under her father's jurisdiction as undisputed legal head of his family. If he found it warranted to keep his daughter locked up, that was his business. All Moroccan authorities could do was to help Norway locate the family, as they did.

A week of tense negotiations, conducted by phone, followed between the ambassador and Nadia's father. Norwegians meanwhile followed the case with utmost suspense, as Nadia's case—*Nadiasaken*—had become a national issue, and the outcome was fraught with uncertainty. Three times her father promised to set her free, only to renege on his word—leading the ambassador, at one point, to call him a liar. A key problem was the father's insistence on a guarantee of "safe passage," meaning he would not be prosecuted on his return to Norway. This the ambassador could not and would not extend; it was up to the police to decide what to do after a thorough investigation. But when all hope was deemed to be lost, Nadia suddenly reappeared in the Oslo airport, her father having paid for her ticket himself. She was met by her brother, a friend of his, and a social worker who was a family friend. According to the media, Nadia was exhausted but happy to be back in Norway. All she wanted was to rest and be left in peace. A week later, she was reunited with her family when they too returned to Norway.

What was the reason for Nadia's father's turn of heart? Probably the interruption of all social welfare benefits to the

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family. This had been a final and drastic move on Norway's part. Though by no means poor, the family incurred a heavy loss: about 17,500 Norwegian crowns a month (U.S. $2,400 at the time) with the father's disability pension (due to a heart disease) and three child allowances. In addition, the family had a comfortable flat at subsidized rent. Stopping these payments was justified on the grounds that the family had left Norway for more than a month without informing the social welfare agencies. This constituted a breach for which it was possible to effectuate sanctions, and Norway now did—with the desired result. Nadia was set free.

But hardly had Nadia been reunited with her family before her case took a new turn: she recanted on her story. According to the media, it had all been fantasy and fabrication. Actually, she had gone to Morocco on her own accord to visit her sick grandmother. But when the family wanted to remain in Morocco longer than she wanted, she became desperate. So she pulled off the lie to marshal help. She was deeply sorry about the disturbance she had caused and the pain inflicted on her family. Now all she wanted was to be reconciled with them.

It goes without saying that this new development caused quite a stir, and many wondered what was really going on. Some Moroccan and Pakistani youths with whom I talked complained that Nadia had let them down. She had had a golden opportunity to become a rallying point for other youths who were threatened with forced marriage, and now, she had chickened out for fear of reprisals. It was perfectly understandable what she had done, but to stand brave so long and then give in . . .

There were also debates in the media—some of which I participated in myself—regarding the plight of the second generation, especially in regard to forced marriage (a common problem in Western Europe). Not that these issues had not been discussed before, but Nadia's case had been a catalyst giving them added urgency and a human face.

Following Nadia's admission of lying, her parents were reported to be preparing a lawsuit against two national newspapers and against the Ministry of Foreign Affairs for having scandalized their name. A sizable compensation would be claimed.

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But it was not to be so. A year later, Nadia's parents were brought to court by the Norwegian state on a charge of "having forcibly held someone against her will" (*frihetsberøvelse*). The minimum sentence is one year in prison; the maximum is fifteen years.

Because I was called as a "cultural expert" for the court, I attended the whole proceedings.[3] I also met with Nadia's parents and her grandfather, outside court, in their home, in the company of a leader from the Moroccan community, who served as mediator. The story that follows draws on this engagement.[4]

The trial lasted for five full days, with an extra day for the verdict. Witnesses for the defense were Nadia's grandfather, her brother, the brother's friend, a social worker,[5] two Moroccan girls, a leader from the Moroccan community, and a few other family friends. Witnesses for the prosecution were Nadia, the ambassador, the police who had investigated the case, a psychologist whom Nadia had seen after her return to Norway, and a few of her Norwegian friends. In addition, the prosecution presented as evidence a tape of two telephone conversations between Nadia and her parents that Nadia had helped the police record without her parents' knowledge. The defense attorneys protested vigorously, but after a thorough consideration, the judge decided to allow the tapes.

Half of the trial (two and a half days) was spent on Nadia's parents' testimony, since proceedings were slowed down by translation. Nadia's mother said in court that she knew no Norwegian, though I know her to speak quite well, and her husband is quite fluent. But with what was at stake, it was only natural that they would seek the added assurance that translators provide.[6]

The parents' story repeated what Nadia had said on her return to Norway: she had gone to Morocco of her own accord to visit her sick grandmother. Supposedly, she had pleaded with them to let her go, against the warnings of Nadia's mother that she might lose her job if she were unable to notify her boss; they had to leave in great haste. But so much does Nadia love her grandmother that she did not care.

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The parents conceded that there had been problems between Nadia and them at times. But her parents had never done anything but act in Nadia's best interests. They were trying to save her from herself and her bad Norwegian friends, they said. To that effect, they were willing to go to some lengths, naturally. But never to the point of beating her or kidnapping her or keeping her locked up. Nadia had always been free to do what she wanted. She had been a loved, even a spoiled, child. And what is more, Nadia in Morocco had been free to go where she wanted; there had been no keys, no locked doors—as Nadia admitted in court. But, as she said, where would she go (without her passport, without money, with informers all around)? "The whole country had kidnapped me!"[7]

Faced with the necessity of having to brand their daughter a liar, the parents turned to an age-old recourse: throwing the blame on others.[8] It was not Nadia's fault that she did what she did; she was under the sway of Norwegian bad influence, from both her schoolmates and some journalists who, the parents claimed, wanted to make money on her. They had tricked her into inventing these lies in order to sell her story.[9]

But according to Nadia's subsequent testimony, they also believed her to be under another kind of influence: supernatural *jinns* that had taken control over her. To her horror, she had been subjected to various cleansing rituals in Morocco (a description was given as part of the trial closed to the public). But this was not something the parents talked about in court. At no point did they present themselves as anything but modern and educated people—which indeed they were. Nor did the defense attorneys try to mount any kind of cultural defense based on the parents' supernatural beliefs, which they might not even have heard about before Nadia's testimony—although such beliefs are widespread among Moroccans in Norway. On the contrary; the defense tried to capitalize on the parents' standing as being of a prominent and cosmopolitan Moroccan family. The court was shown photos of Nadia's grandfather's palace in Morocco, and of her parents' stylish house.[10] Bringing *jinns* into the picture could only have complicated this image, though it might in fact have helped explain why Nadia was kept so long

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in Morocco: for the cleansing rituals to work, one most not cross the sea for a month, I am told by Moroccan-Norwegian friends.

The crown witness for the prosecution was Nadia. She made her entry from a back door, avoiding the onslaught of gazes that were sure to meet her had she come from the front. For she was a celebrity already, through no wish of her own. Indeed, she had been in hiding for over a year, living at a secret address. And when she testified in court, there were two policemen sitting guard behind her, just for security.

To bring one's parents to court—especially a mother—is considered the utmost outrage among Muslims (as among many others). *It did not matter that it was not she who had done it*; the charge had been brought by the Norwegian police. In the eyes of the community and her family, Nadia was a traitor. She had received threats on her life.

She entered the courtroom with a blanket over her face to avoid the gaze of the public, but also to avoid her parents' eyes. She had asked that they not be present in the courtroom proper, and they were sitting in the translator's cubicle to the very back; but it was only a few steps away and there was just a glass wall separating her and them.

She had not made it a condition of her testifying that they be absent from the courtroom proper. But she had pleaded, and her wish had been granted. No one doubted the agony she must be going through. Nor did anyone doubt the pain of her parents' hard-tested emotions. They had not seen each other for a year, parents and child, not since the day Nadia decided to tell the truth after all, having first done it in Morocco, and then having repented to cover for her parents on her return to Norway, only to be overcome by fear that they might let her down again—and then who would believe her cries for help? She was also concerned about her little sister, whom she adored and who might one day come to share her fate, as well as others, unknown, who were in the same shoes. (All this I know from her testimony in court.) So she had gone back on her cover-up story, contacted the police (whom she knew to be conducting an investigation of her parents) to tell the truth, and cooperated with them to gather evidence against her parents.

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She was a fragile-looking young girl as she entered with the black blanket covering her head. But as soon as she stood up in the witness stand, the blanket removed, she appeared steadfast and strong in her demeanor. She spoke with a clear voice, and answered lucidly every question. At times she broke down. The memory was too much for her. Some time into her testimony, her attorney suggested that she be allowed to sit in front of the witness stand, the box at her back.

That must have been a relief. Standing, she had felt the full force of her parents' gaze, hitting her from the back. She had made no concession to them in the way she appeared. She was dressed in black pants and a black sweater, both tight-fitting, but not immodestly so—from a Norwegian perspective. Her parents would have felt differently. Knowing that how she dressed had been a point of contention between Nadia and her parents, I cannot help wondering if she did it on purpose. But why should she not appear her own self in court when that was what the whole battle had been about, her right to be her own person?

I never turned to look at her parents throughout Nadia's testimony. But I know others who did; one journalist reported her father shaking his head in exasperation at times as she told the court her story. Her mother reportedly cried a lot. The next day Nadia's father asked to be allowed to speak in court, out of turn. He accused his daughter of being a liar. All she had said, he said, was a lie. How could any parents do to their daughter what she accused them of? Could anyone be so callous? But Nadia had brought shame on the whole family and herself, he claimed; that was why she was desperate. She was not a virgin anymore, and in Morocco, a girl who is not a virgin before marriage has no future.

In revealing that Nadia was not a virgin, Nadia's father went public with a secret that there was no reason for him to reveal had he not wanted to. And thus he may be seen to have triggered the shame that otherwise could have remained undisclosed. Nadia had been more discreet. She had revealed to the court, as part of a closed hearing, that she had told her mother, on the way to Morocco, that she had slept with a boy.[11]

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Now her father had exposed the disgrace, bringing it on himself, as it might seem, by making the matter public. But perhaps the father felt that he had already been so disgraced by his daughter's misdemeanors that there were no holds barred and nothing to lose: better to reveal the depth of her fall and be done with it.

"Here in court," he said, shaking his head, "you think it is we who have committed a wrong. But Nadia cries because her honor is destroyed. Everything she tells you is just lies and falsehood. But I know that she does not mean any of this. It is her accomplices who are making her do it. Nadia has forgotten the nine months in her mother's womb, the care and affection she received, her childhood, her upbringing until she came of age. Now we are repaid for the kindness we as parents have shown," said Nadia's father while her mother cried openly.

According to Nadia, her parents had planned to marry her to a twenty-one-year-old Moroccan (whose picture her mother had showed her) so that he could get a visa to Norway and so that she would "become Moroccan." Indeed, this was what the whole battle had been about: her wish to be Norwegian versus their insistence that she "become Moroccan" and "become Muslim."

The retraction she had produced on her return to Norway was at her parents' instruction. It was their deal for setting her free: she would ensure that they would not be prosecuted by taking the whole blame herself. Her concern for her younger siblings also contributed to her trying to pull off the lie.

That Nadia and her parents had long been at loggerheads is clear: six months before her abduction, Nadia had contacted the child welfare agency regarding her father's ostensible abuse. Her father, she said, beat her and was furious because she was "too Norwegian": she was not allowed to wear makeup, wear pants, go out to dance, have a (Pakistani) boyfriend. Her father had even gone to a café where she had worked and threatened some of the staff that he would kill them if they did not make Nadia quit. He did not want her to work in such a place. (This was confirmed by the people in question.)

As a result, Nadia was placed under child welfare custody for three months, living in a youth institution. She moved home

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only after her eighteenth birthday (when she became legally an adult) and with her father's assurances that he would not beat her. Apparently the move was voluntary. But as Nadia said in court, the project (her word) of the child welfare agencies was not her own. They were set on reuniting her with her family against her will.

The problems did not go away; they resumed. Her brother said in court that he did not love her anymore, not after she had said that she did not want to be a Muslim. Her parents said in court that they had nothing against Nadia being "Norwegian." She could do as she liked, even marry a Norwegian. But they did not like her drinking and smoking and staying out late at night. Would any parent, even a Norwegian parent? Two girls who served as witnesses for the defense confirmed this—that Nadia's parents had given her full freedom, even to marry the Pakistani if she wanted—but her parents were naturally upset by Nadia's disgraceful behavior. Had she not been seen drunk in the street on occasion?

But Nadia herself told a different story, about being beaten and oppressed to "become" a Muslim and Moroccan: "Did you not tell me I would have to stay in Morocco till I was married and had a baby and only then could I return to Norway?" Nadia asked her mother in a telephone conversation that was taped and presented as evidence in court. "And did you not threaten me that I would have to remain in Morocco till I rotted?"

"You have misunderstood me, my daughter, I was only joking," said the mother.

"It is not the kind of thing one jokes about," said Nadia.

A key witness for the defense was Nadia's maternal grandfather, a prominent and wealthy patriarch who wielded considerable influence in his home district in Morocco. A cordial man, he left in disgust: "I thought Norway was a democracy where there was justice before the law. But this is not democracy! The judge chose to believe a young girl over her family; they sided with her. That is injustice." He would go back to Morocco to tell the people so and to launch a court case against the ambassador who had vastly overstepped his powers. "He even offered to send a car to pick up Nadia—from her own family!"

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But the worst was all the things the ambassador had said to the media, and now in court. The grandfather wanted his family's honor restored, and he was going to do it by suing the ambassador.

Had not Nadia gone to Morocco of her own free will to visit her sick grandmother? Had she not begged her parents to let her go, even though they had been concerned that she would let her employer down by not showing up for work? The grandfather's testimony on these points was in line with that of the parents. They had told the court how the decision to go to Morocco had been made impromptu on a Saturday night. The telegram (from Nadia's mother's brother) telling the family of the grandmother's serious sickness and urging them to come had arrived the day before, but there were no tickets for a flight to Morocco until two weeks later. So Nadia's father was thrilled when by sheer good luck on Saturday, he met a man who was going to drive to Morocco the next day; by chance the man had five seats free in his delivery van—just enough to accommodate Nadia's family.[12] But all this meant that the decision to go was not made until Saturday night. Nadia came home late that night and went to work early the next morning, so it was mid-Sunday before she was informed of the family's decision to travel that night. To her mother's delight she insisted on coming along. "I could not believe my ears when Nadia said she wanted to come," said her mother in court. But so much does Nadia love her grandmother that she was even willing to let her employer down and risk losing her job ("I'll get it back," her mother reported her as saying). And yet the Norwegian state prosecutes the family for having forced Nadia to go, even kidnapping her! The grandfather was outraged.

But when he was questioned about his wife's illness, he was at a loss: well, she is sick all the time. . . . How is she sick? Well, she has diabetes and she faints and such things. . . . Does she faint often? How could he know, he doesn't sit at home . . . and so on.[13] It was a sad spectacle. Watching Nadia's mother watch her father was heart-rending. Whether his exalted status had forbidden them, out of respect, to instruct him in their story, or whether he had forgotten his lines, or was just out of place in

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court, I cannot tell.[14] Anyway, his testimony undermined the parents' story.

Someone who might have corroborated the parents' story, the driver with whom they went to Morocco, could not be brought as a witness because he could not be identified. The parents claimed not to know anything about him save for his first name—which did not sound plausible, given that they had spent five days together. According to Nadia, they had also spent a night in his house in Morocco.

But other witnesses came out for the parents, among them the social worker. She said she could not imagine that the family would do anything bad to Nadia; she knew them to be kind and caring people. She also painted a rather dreary picture of Nadia, as did two Moroccan girls—Nadia's friends, as they said—along with her brother and a friend of his. They all declared or implied that Nadia was a rather "loose" girl, fond of drinking, smoking, and staying out late at night.

But this was not Nadia's own fault, they said. It was because of her schoolmates in high school who were such a bad influence on her. Time and again this point was stressed by witnesses of the defense. It was not Nadia herself but her schoolmates who caused her to fall.

A crown witness for the prosecution was the ambassador. Space prohibits a lengthy discussion of his testimony, but I think it safe to say that it made a strong impression on the court. He painted a most unflattering picture of Nadia's parents. Her father, he said, had even threatened to beat Nadia if Norway did not grant him "free passage." Her mother had called all Norwegian women whores.[15] Nadia had been close to a breakdown and had been cajoled and threatened by her parents in the worst possible ways—as all the staff at the Norwegian embassy in Morocco could confirm, for they had listened in on the telephone negotiations. The ambassador's testimony was entirely in line with Nadia's.

Another strong witness for the prosecution was the psychologist whom Nadia had been seeing for a year since she came back from Morocco, and who gave vivid testimonies of the traumas she had suffered.

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In the end the Norwegian state chose not to include a charge of forced marriage against Nadia's parents. For though Nadia was under the clear impression that they had a marriage in mind for her, there was no firm evidence of this. The charge was simply that of forcibly holding someone against her will, with a stipulation that the offense had exceeded one month, as it had in Nadia's case.

The jury took only three days to reach a verdict. Both parents were found guilty. Nadia's father was sentenced to one year and three months on suspension, her mother to one year. Her father was also sentenced to pay a fine of 15,000 crowns (then about $2,000) and "court proceedings costs" (*saksomkostninger*) of 60,000 crowns (about $8,000) connected with bringing witnesses from abroad, the defense lawyer's journey to Morocco, and the like.

Nadia's parents thus received a sentence lighter than the legal minimum for the crime of which they were convicted. My own role may have had some significance here; the published verdict indicates as much. As a witness I was asked to answer truthfully every question but also to bring up any matter that I judged to be of significance to the case. And I did, speaking at some length on what I judged would be the cost to Nadia and her family should her parents, and especially her mother, be thrown in jail.

I was alarmed, I said, to find that whereas Nadia had had a lot of support among youths in the Moroccan community before the trial, she had lost it now. Instead, she was harshly criticized by nearly everyone; the reason I heard was that she was "throwing her parents in jail." People do not care that it is the Norwegian state that charged the parents. To them she is guilty, and of the most horrible deed: of throwing her mother in jail. Elaborating on the mother's position in Islam, I tried to make it comprehensible that the reactions would be as they were. I also gave some objective reasons why the mother should be treated more leniently. As a wife in Islam she is subject to the "law of obedience," being duty-bound to obey her husband. Hence, the benefit of the doubt should be the mother's in particular. In its published verdict, the court also noted that as

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there was no evidence that the mother had beaten Nadia, she should receive a milder sentence than the father.

The court granted that for the sake of the whole family, the parents must not be jailed. But it was also necessary to establish a firm precedent and underscore the seriousness of the crime. The final sentence was in accordance with the prosecutor's procedure. He had pleaded forcefully for Nadia's case, asking the court to sentence her parents while keeping the options for family reconciliation open.

In its verdict the jury noted that there had been attempts by several witnesses to present Nadia in a disreputable light (*fremstille henne i et mindre heldig lys*). However, the court had a positive impression of Nadia as a clear-headed *(ryddig*) and bright girl. In the view of the court, Nadia deserved respect for the way she managed to carry through with her testimony. The court could not see that evidence had been presented to indicate that her demeanor was any different from that of other Norwegian girls her age.

In this, the court followed the recommendation of the prosecutor, who had advocated that Nadia receive some form of redress (*oppreisning*) for the injustice she had suffered from the massive attempts by some witnesses to blacken her reputation and portray her as a liar.

In the end, Nadia stood in willful independence, a solitary figure, bereft of expressed support within the Muslim community, where she was perceived by many as a traitor. She even received threats on her life. Her parents' attempts, corroborated by others, to make her appear the dupe of bad Norwegian friends were totally against her own wish: to be perceived as a person in her own right. In time she has become a role model for others, both female and male, who gained strength and felt support from the Nadia case—without her ever trying to capitalize on her name. The only pictures that have appeared of her in the media were a snapshot published while she was in Morocco, and one of her under the black blanket on her way to court. Nor has she ever agreed to be interviewed. She lives quietly at a secret address. But I know that she has helped others who have sought her out. And by her example she has

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come to lend courage to others, none of whom lent her support during the trial, but who in the aftermath stand on her shoulders. To understand how that came to be, let us look at the premises and implications of the verdict.

* * *

It was the matter of citizenship that decided Nadia's fate, in more than one way. Obviously, had she not been a Norwegian citizen, the Norwegian government could not have interceded on her behalf. But it was important that her parents were also Norwegian citizens. This is clear from the writ of the verdict. It states:

> The defense attorneys have argued for acquittal on the grounds that Nadia, according to Moroccan law, becomes legally an adult (*myndig*) only at twenty years of age. Moroccan citizens are not freed from their citizenship if they acquire another. Nadia had, therefore, dual citizenship. Her parents must therefore have assumed that she was a child/minor in Morocco, and that they were in their full right to keep her there against her will.
>
> The court does not agree. When the parents have taken the step of applying for Norwegian citizenship for themselves and their children, this implies both rights and duties. An application for citizenship means that one has decided for oneself which state one wants to be most closely connected with, if not emotionally, at least judicially. That also means that one has to submit to (*innordne seg*) the rules applying in this state. The parents were well aware of what the legal age in Norway is. For a Norwegian citizen resident in Norway one cannot assume that Moroccan law should apply during short-term visits in that country, and especially not when [Nadia] has been brought there against her will. The criminal offense (*det straffbare forholdet*) was initiated in Norway. . . . Forcibly holding Nadia against her will was therefore in violation of the law.
>
> Ignorance of the law (*rettsvillfaring*), which also has been claimed as grounds for acquittal, is likewise not applicable, according to the court. Forcibly holding a person against her will is illegal in most states, if not in all. As residents of Norway, and as Norwegian citizens, [Nadia's parents] must know the rules at least in this country.

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Both the subjective and objective conditions for sentencing (*domfelling*) are present, and the accused are sentenced according to the charge.

The verdict further states:

> The case arises from culture conflicts. But it is the parents who have chosen to live in Norway. After many years of residence here, they are fully aware of how Norwegian society functions, for good and bad. That they wish to maintain the customs of their country of birth is unobjectionable, so long as these customs do not come into conflict with Norwegian law. Children can develop in ways that are different from what the parents hope for. But that is the risk in having children, and—not least—in letting them grow up in a different culture. The parents have made a choice as to which country their children will be molded by. That circumstance may have such consequences as resulting in the case currently before the court. Using violence and forceful deprivation of the freedom of movement as an answer is unacceptable.
>
> The court also notes that the family continues to live in Norway and that they have two children below school age who will grow up here. Therefore, there must be aspects of Norwegian society that they, in sum, perceive as more positive than the negative ones.

The verdict was a clear statement of what the Norwegian state demands of its citizens, according to the law. And it was historic. It was the first time a Norwegian court declared—and in blunt language—what citizenship entails. Reactions varied accordingly: outrage from many members of the Muslim community; satisfaction from many others.

Mohammed Bouras, chairman of the Islamic Council, declared: "This is an insult to all Muslims. It implies that we are bushmen who do not follow Norwegian laws and rules!" It was the issue of citizenship and the judge's emphasis on the duties entailed in taking Norwegian citizenship that so caused his wrath. He was also quoted as saying, "The charges and the verdict are an offense against the family and us Muslims. The judge is requiring us to respect Norwegian laws, but does not show us any respect."[16] Mr. Bouras had been a witness for the defense.

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Others were quoted as saying, "This is directed against us Muslims! The Norwegian state does not care about Nadia. They are just using her against us."[17]

It was clear that the verdict had added insult to injury. "*Justismord!*—Miscarriage of justice!" cried an editor and friend of Nadia's family.[18] "A declaration of war!" announced a prominent journalist.[19] His concern was that by not making any concession to Nadia's parents, the judge and jury had not just done injustice to them, but antagonized the Muslim community—and reactions were bound to come. There was nothing wrong with the sentence, as he saw it; it was the premises of the verdict that were unacceptable: "[Saying that] the parents ought to know how Norwegian society functions and that it is they themselves who have chosen to live here—[is] a form of paternalism (*besserwissen*) that can only be like salt in open wounds," he wrote.[20]

Nadia's parents appealed the verdict on the spot: the defense attorneys recommended it; their honor demanded it; and the monetary fine seemed an insult. I believe they would have been happy not to have to go through the whole ordeal again.[21] But such a recourse seemed precluded in the setting. I also know there were members of the Moroccan community who wished they would accept defeat on the grounds that their case seemed too weak, and the evidence against them too strong. But in the end, their efforts to appeal came to no effect.

Nadia's father died of his heart disease six months after the trial. The Norwegian state subsequently withdrew its charge against the mother. Her brother, who wanted to proceed with the case, tried to appeal to a rarely applied section of the law so as to appear in his father's stead. But he was refused, to the mother's relief. So far, an open reconciliation between Nadia and her mother and younger siblings has not been possible, due to her brother's rage. At eighteen years of age, he is holding the family in thrall, set on defending his honor. Nadia is living by herself and managing relatively well—though suffering greatly from her father's death. There are those who say that Nadia caused his death. But it may be well to remember that according to Islam, the time of one's death is written at birth. It is foreordained and cannot be changed.

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Nadia's case poses a number of basic questions: what are the limits of cultural tolerance? How do we balance respect for human rights with respect for cultural difference? What of the rights of the child versus the rights of parents? And how do we enforce the law in the case of violations that were committed with the best of intentions, such as to protect one's child from harm? Religion is also an issue: should not Muslims, for example, be granted respect and the right to bring up their daughters in accordance with their religion?

These and other issues came to the fore in Nadia's case, and though the court attempted to reach a solution, as perforce it had to, I think no one who witnessed the trial felt that there were any winners. Nadia was reported by her attorney to have said that she was glad the court believed her. Beyond that, she has made no statement. Her case split a family and caused irreparable suffering. I, for one, said in court that it might have been better if it had not been tried. Mediation might have been better. But in retrospect I have my doubts, having come to realize how hard the issues were. And as the jury said in its verdict, the graveness of the crime demanded that it be tried.

The power of Nadia's case lies in the resonance of its story through time and place. One need not be Norwegian, or Muslim, or Moroccan, to be drawn in. The issues are universal, the (re)solution was particular, but anyone can take the various elements and move them around—"play" with them, if you wish. It is just that in real life, something must be done. If not, that too has consequences. Real consequences.

* * *

"Citizenship in Western liberal democracies is the modern equivalent of feudal privilege—an inherited status that greatly enhances one's life chances," wrote Joseph Carens.[22] Let me end with a story that complements Nadia's case and throws it into relief. It highlights some of what remains to be done if the thrust of Carens's dictum is to be borne out, and pertains to the plight of the child.

In 1994, three-plus years before "Nadia," another Norwegian girl, fourteen years old, was brought out of the country to

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Morocco, her parents' original homeland. They too were long-time Norwegian citizens. I shall call the girl Aisha.

Like Nadia, Aisha had appealed to the child welfare agencies for help due to her father's violence. Unlike Nadia, she came from a family well known for its malfunctioning. To be brief, both Aisha's urgent appeals and those of her teachers on her behalf failed to impress the child authorities. After a brief respite with a foster family, Aisha was reunited with her family by force. Two weeks later she was taken out of the country, and not heard from again until four years later, when she reappeared in Oslo. Meanwhile, she had been married by force and had her schooling interrupted, so she is left without even an elementary-school certificate. She also is a Norwegian citizen, but all attempts on her school's and my part to make Norwegian authorities intervene for her failed.[23] As one significant document states: "Because she has gone with her family to her homeland [*sic!*], Norwegian jurisdiction does not for the time apply to the family."[24]

With the hindsight of Nadia's case, we can see why that would be. Aisha was only a child. Nadia was, after all, an adult—according to Norwegian law. Hence, it would be much more difficult for Norway to intervene on Aisha's behalf between Aisha and her parents. Also, Nadia struck an alarm: she managed to get to a telephone. Aisha never got to that point. There are other relevant contrasts, too. But the main point has been made: it takes more for a child to be heard and have her or his rights as a Norwegian citizen protected than for an adult. Therefore, the rights of the child must be strengthened, especially when dual citizenship is involved, and particularly for females.

Because of Norway's failed effort to stand by this citizen, she has been subjected to forced marriage—something Nadia was spared. When she now is back in Norway at all, it is only because she is being used as merchandise (*vare*), as she says: to bring in a husband who would not get a visa but for her. This is called "family reunification."

But Aisha defeated her family: she ran away. To her surprise, her father, who had threatened to kill her, gave up her passport and marriage certificate to the police when they came to his

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door requesting them. She now wonders if he has taken a lesson from the Nadia case. Is he afraid they will cancel his social welfare benefits too?

Family reunification is a double-edged sword. On the one hand, it exposes the children of immigrants in Europe, not just Norway, to immense pressure to comply with arranged marriages, and in many cases to real force. In Pakistan, for instance, marriageable girls in Norway are called *visuni*—visas. And Norwegian-Moroccan girls are spoken of as gold-edged papers. But on the other hand, family reunification is a salvation for girls like Aisha and many others who return to Norway thanks only to their quality as "visas." If not for that, many more girls might have become missing persons.

Nadia's case has a moral lesson, as I see it: human rights must take precedence over what may be termed, for lack of a better expression, cultural rights. Human rights are based in moral individualism: they are entitlements of the individual as against the state, the family, the church, or other controlling powers. And they apply across the board in liberal democracies. There can be no distinction made on the basis of ethnicity, religion, or other factors. Equality applies, as does the right of exit from the group, as Nadia and Aisha have chosen. The policy implications are these: a plural society requires a social contract to protect the rights of all members. A strong state, not a weak state, is the best guarantee of human rights, as Michael Ignatieff, among others, has argued.[25] I see the verdict in the Nadia case as an attempt by the Norwegian state to make a case for citizenship—a dissipated notion that needs to be reinvented in our times. Both Nadia's and Aisha's cases show clearly what is at stake.

Dual citizenship is often presented by academics as an asset, a resource. And so it is, for the likes of them. I hope to have made a case for the perils of dual citizenship. In this, as in many matters, the crucial question is: for whom is it an advantage? Who stands to lose and who to gain? Children, I have argued, may be the main losers, and girls most of all. Would that policymakers and other interested parties will heed the implications of Nadia's and Aisha's stories and thus reconceptualize citizenship and realize what is in jeopardy.

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Telling Aisha's story to a friend in Oman recently, and dwelling on the injustices of the Norwegian state, I was struck by her comment: "She was lucky. She at least had a place to go!" My friend was right. A citizen of a European welfare state, Aisha can now call on help—now that she has lost four years of her life. Sacrificed on the altar of culture at fourteen, she is now ready, and will be helped, to get her life in order and have her human rights protected. She cannot fully appreciate how, but a girl named Nadia helped lay the foundation by changing Norwegian history.

ENDNOTES

[1]This contact was made on September 10, two days after Nadia's call. This means that the efforts by the authorities to keep the matter secret from media exposure were successful for about twenty days; the news did not break until October 3.

[2]In fact, an international arrest order had been issued against Nadia's father in case he should leave Morocco.

[3]I had been called as a witness for the defense, but when I realized that this meant that I could only be present during my own testimony (as applies to all witnesses), I asked for a redefinition of my status, and it was granted.

[4]I know more than I am able to tell, since I was also present during a part of the proceedings that was closed to the public during Nadia's testimony. In addition, I withhold information that had been given me in trust by Nadia's mother. I also do not include what I know from telephone conversations with the father's defense attorney, or from private conversation with the Moroccan leader and others. My account is a public account, based on what was revealed in the court and in the media. All translations into English of the testimony given in court, as well as any translations of quotes from other sources, are my own.

[5]This woman was a friend of Nadia's brother, having been assigned by the child welfare agencies to help him get his life in order.

[6]There were two interpreters, one in Berber for Nadia's mother, one in Arabic for her father. Since I am a fluent Arabic speaker, I could follow much of what was said by the father (not all, for there are dialect differences between his Moroccan and my Egyptian), and even a part of the mother's speech, for Berber contains a host of Arabic words and expressions. It was quite clear to me that having translators provided the defendants with a degree of flexibility, as misunderstandings and inconsistencies could be attributed to the translators, who also, in some cases, helped the defendants in their answers.

[7]The point here is one that surfaces time and again in stories of girls kidnapped to the Middle East or South Asia by their parents: they have nowhere to go, they

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cannot possibly escape, even though their feet are not tied and the doors are not locked. The dangers of even attempting an escape are so dreadful that the risk cannot be run, and the dangers of succeeding are minuscule. These girls live under the threat of death, and they are observed in all and everything they do. In only two cases that I know of, among forty-odd Norwegian second-generation immigrant girls being abducted and married by force by their parents (or threatened to be married), has the girl managed to escape. See Nasim Karim, *Izzat—For ærens skyld* (Oslo: Cappelen, 1996), and Hege Storhaug, *Mashallah* (Oslo: Aschehoug, 1996) and *Hellig tvang* (Oslo: Aschehoug, 1999). For an especially harrowing case of a girl subjected to forced marriage though she was "free" to go anywhere, see Unni Wikan, *Generous Betrayal: Pluralism and Culture Politics in the New Europe* (forthcoming).

[8]For an extensive discussion of such practices in the case of Egypt, see Unni Wikan, *Life Among the Poor in Cairo* (London: Tavistock, 1980), and *Tomorrow, God Willing: Self-Made Destinies in Cairo* (Chicago: University of Chicago Press, 1996).

[9]Her father also argued in court that the Norwegian authorities and the police had pressured Nadia into keeping to her original story of falsehoods.

[10]Nadia's parents owned a house valued at about U.S. $120,000 in Morocco that they used as a holiday residence.

[11]I cannot help but wonder why she did it, and guess it might be so as to dissuade her parents from trying to marry her by force. Now the mother would know that the virginity test on the wedding night would have the whole family scandalized.

[12]This part of the parents' story rings less than true to me. From what I know (and I have many friends within the Moroccan-Norwegian community), people travelling to Morocco overland usually have their cars loaded, for there is a constant stream of people who want to go, and recruiting passengers is a way of sharing costs and company. Thus, finding a driver who is about to go with a near-empty van would take more than sheer good luck.

[13]Nadia's grandmother's illness was, of course, a key issue during the trial. As proof of their case, the parents presented a telegram they had received from Nadia's mother's brother, saying: "Your mother is ill. Come urgently." And yet Nadia's mother said she did not phone her family in Morocco during the seven days it took for them to reach home; Nadia's father said he phoned the day the telegram arrived but not after. By the time they arrived, the grandmother was quite well.

The jury found the story less than plausible. As stated in the premises of the verdict: when a close family member is gravely ill, one usually uses a phone to convey the message. The telegram appeared to be part of a cover-up operation. Moreover, if the grandmother had been so ill, one would have expected the parents to make contact during the seven days.

[14]As Nadia told the story in court, she had been forbidden to tell the family in Morocco that she had been forced to come. The appearance was to be given that she did it voluntarily.

[15]This caused quite a stir when it became known through the media. Several prominent Norwegian women, among others, were appalled to be so desig-

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nated and voiced their complaints in no uncertain language. Their critique was directed not just at Nadia's mother but at other immigrants who enjoy the fruits of the Norwegian welfare society while deprecating its basic values of equality and freedom. Nadia's mother was devastated by the reaction she had triggered, and I tried to cushion the blow by telling the court and the media that to call someone "whore" in the Middle East is no big deal: it is a common swearword devoid of the literal connotations it carries in the West. This does not deny the fact (as I did not say) that Nadia's mother may well have meant that Norwegian women are whores.

[16]Cited in *Dagbladet*, 11 November 1998.

[17]Cited in *Aftenposten*, 11 November 1998.

[18]Comment made outside the court immediately after the verdict (cited in *Dagbladet*, 11 November 1998).

[19]"Declaration of War" was the headline of a commentary on the court case by Peter Normann Waage, a prominent Norwegian journalist, who covered the case for the newspaper *Dagbladet*.

[20]Ibid.

[21]I base this judgment on four sources: talks I had with the mother the evening before and her public statements that all that mattered to her was to be reconciled with Nadia; Nadia's testimony in court that her father had actually wanted to release her in Morocco once the ambassador intervened, but that it was the mother's family that was wholly against it; the father's heart disease; and reports from a close friend and trusted person in the Norwegian-Moroccan community that the father came to him shortly before his death and expressed his regret that he was forced to continue with the appeal.

Whether he wanted to or not, the father had little choice but to proceed with the appeal for the sake of the family's honor. The fact that he had married into a family far above his own family's standing complicated matters further. His marriage to Nadia's mother appears to have been a love marriage conducted against her family's wishes (which might have been why they went to Norway in the first place). To jeopardize her family's honor further by refraining from launching the appeal would have been out of the question, as I understand it.

[22]Joseph H. Carens, "Aliens and Citizens: The Case for Open Borders," *The Review of Politics* 49 (2): 1987.

[23]I was contacted by the school and asked to help after Aisha had disappeared. For further descriptions of the case, see Wikan, *Generous Betrayal*.

[24]Because the case was confidential, I cannot reveal the source of this quotation. But it stems from a superior official body (not a court) to which the case was appealed.

[25]Michael Ignatieff, "Whose Universal Values? The Crisis in Human Rights," Praemium Erasmianum Essay, The Hague, 1999.

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Usha Menon

Does Feminism Have Universal Relevance? The Challenges Posed by Oriya Hindu Family Practices

INTRODUCTION

FEMINIST ACTIVISTS working in India today are both troubled and puzzled by their apparent inability to mobilize Hindu women.[1] Why, they ask themselves, have they been relatively ineffective in energizing Hindu women both to protest gender injustices and to directly fight them? Why—and this is a bitter pill to swallow—has "politicized religion" been so much more successful in motivating Hindu women to take to the streets in defense of a variety of religious causes?[2] As the feminist scholar Patricia Jeffrey acknowledges, "Feminists can surely derive little satisfaction, for instance, from the [Bharatiya Janata Party's] ability to mobilize women in defense of Ram's birthplace, often in greater numbers than feminist organizations have managed to mobilize women to protest dowry murder."[3]

In this essay, I do not address the second question. However, with respect to the first, I suggest that feminists working in India find themselves out of touch with ordinary Hindu women because they offer very little in terms of message and meaning that resonates with the lived experience of these women. I submit that feminism is so particular a product of Western social and intellectual history, its moral order constructed so explicitly in terms of equality, individual rights, and personal choice, that it appears quite alien to Hindu women who live

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within another, equally elaborated moral order that cherishes self-control, self-refinement, and duty to the family.[4]

At the outset, to avoid making unwarranted generalizations, I need to specify that when I speak of Hindu women, I mean upper-caste, predominantly Brahman women who adhere to a fairly rigid code of conduct, often seen by outsiders as restrictive. Lower-caste women are not expected to follow Brahmanical practice; and indeed, they do not. However, such practice remains the cultural ideal, and when lower castes claim higher ritual status, they do so on the grounds that their customs and practices are becoming progressively more Brahmanical—the process termed "Sanskritization" by the Indian anthropologist M. N. Srinivas, who first described it.

I am reluctant to overstate the distinctions between individualistic and group-oriented cultures, but the ideology of individualism that inspires feminism can certainly be identified as the primary reason for its failure to mobilize large numbers of Hindu women.[5] Feminism, by focusing on the rights of women as individuals, attempts to challenge and dismantle family structures. It does not recognize and acknowledge the importance of the family in these women's lives. It chooses to ignore the fact that, for these women, the family roles they occupy as they mature and age provide them with the deepest sense of who they are as persons.

The various feminisms, despite their many differences, share this ideology of individualism—even Carol Gilligan's "interdependent" version. This version, which distinguishes itself by stressing the importance of relationships in the lives of women, would be unacceptable to most upper-caste Hindu women. Gilligan sees women as achieving maturity as moral beings when they are able "to consider it moral to care not only for others but for themselves."[6] She questions the morality of selflessness and suggests that understanding the concept of rights properly enables women to see "that the interests of the self can be considered legitimate."[7] Thus, although Gilligan emphasizes the ethics of caring and the importance of relationships to women, the primacy of the individual is never questioned. This emphasis on the self would puzzle most Hindus, men and women. They would see it as narcissistic, in some ways deeply immoral,

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and ultimately futile, because they believe that the experiencing self does not exist apart from its connections with others.

THE HINDU WOMAN UNDER THE FEMINIST GAZE

For many decades now, the lives and experiences of Hindu women have proven a fertile ground for observation and academic scholarship. The volume of work produced has been truly enormous. I cannot pretend to provide even a marginally competent account of the various kinds of work that have been done; the sheer volume together with the nuanced differences between the positions of various scholars make that task virtually impossible to accomplish within the limitations of this essay. Rather, I will use broad brush strokes to give a sense of the general trends in this body of scholarship.

In the early years, the predominant tendency was to emphasize the utter passivity of Hindu women and, sometimes, their active complicity in their own subordination.[8] While scholarly expositions on the Hindu woman as victim continue to appear with remarkable regularity, another trend has emerged—to emphasize the "agency" and "activism" these women supposedly display.[9] Inspired by James Scott's work on Malaysian peasants, many feminist scholars now suggest that Hindu women only apparently acquiesce to male domination.[10] Appropriating Scott's words, they point to the "everyday forms of resistance" that Hindu women supposedly perform—complaining, foot-dragging, mocking their oppressors: the men and senior women of the household. Thus, Jeffrey argues, "In various low-profile ways, women critique their subordination and resist the controls over them—in personal reminiscences or songs, in sabotage and cheating. The husband treated like a lord or deity to his face may be derided behind his back or given excessively salty meals."[11] In a similar vein, while speaking of the expressive traditions of north Indian women, Gloria Raheja and Ann Gold suggest that "the active rebellion that may at one moment be impractical or impossible may at another moment become plausible precisely because the idea of social transformation has been nourished in proverbs, folk songs, jokes, rituals, legends, and languages."[12]

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Home-grown Indian feminists, stung by criticisms that they "are out of touch with local realities and are the only malcontents," are drawing solace from such evidence of rural women's discontent—it makes them feel less isolated and "deculturated."[13] They are beginning to take heart because the "one vital message in the voices of unlettered village women, unaware of feminism as conventionally understood, is that they do critique their situations."[14] Of course, the assumption that women's discontentment with their particular life circumstances immediately and unproblematically translates into the desire to join the fight for women's rights appears a little naive. Feminists are seemingly unaware that all people, including Hindu women, are capable of reflecting on their situations and expressing dissatisfaction without necessarily seeing themselves as victims of insidious, systemic exploitation who need to rebel against inequitable social arrangements.

In fact, this is precisely the point that suggests an explanation for the failure of feminist organizations to muster the kind of substantial grassroots support they have been working toward since the 1970s. Feminist activists fail to appreciate the fact that the large majority of Hindu women do *not* perceive themselves as victims of systemic gender inequities. These women would readily acknowledge that some women, sometimes, face difficulties in their lives, but such situations, they believe, are ameliorated through the actions of individual women and their family members. They do not require any kind of substantial, gender-wide mobilization.

The question then arises: Why do Hindu women tend *not* to believe that they are the victims of systemic gender inequities? The answer, I suggest, lies in the substantial sense of self-worth that Hindu women derive as valued and full-fledged members of their extended families. In the following section, I represent the lives and experiences of Oriya Hindu women, within the context of the extended family, to show the ways in which, through participating wholeheartedly in their family life practices, they gain "meaning, purpose and a sense of power" in their lives.[15] I use material gathered through observation and conversation over several years of fieldwork done in the temple

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town of Bhubaneswar in eastern India, years during which I came to know quite intimately many of the women who speak on these pages.

CUSTOMARY PRACTICE AND THINKING IN THE TEMPLE TOWN

The temple town of Bhubaneswar in Orissa, eastern India, has been described by others and myself as centered around a medieval temple (tenth-eleventh century) dedicated to the Hindu god Siva.[16] Most residents of this neighborhood belong to families with hereditary connections to the temple and follow customary Hindu thinking and practice in their lives, even today.

Like Hindus elsewhere, Oriya Hindus here believe in the materiality of all phenomena: nothing is non-material, not even space and time, although distinctions are made in terms of the subtlety and grossness of matter.[17] They conceive of the body as open and relatively unbounded, shared and/or exchanged across the life course with others, through events like birth and marriage and acts like sharing food and living together.[18] Hindus, therefore, do not think of the person as indivisible and bounded—as an individual. Rather, the Hindu person is "'dividual' and divisible," continually changing and being reconstituted by the givings and receivings he or she engages in.[19]

While believing that exchanges between people are inherent and inevitable, Hindus also use this theory of the relative permeability of the human body to manipulate and transform deliberately their physical substances to refine themselves. Throughout the life course, through daily practices (*nityakarma*) and rituals of refinement (*samskara*), Hindus regulate, manipulate, and transform themselves.

All human bodies are permeable, but women's bodies are more so because women menstruate and reproduce. The cultural emphasis on self-refinement, therefore, requires that women be more concerned than men with regulating the exchanges they engage in. They do so by secluding themselves within family compounds, interacting predominantly with familiar or related persons, and meticulously observing prescribed daily practices.

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THE ORIYA HINDU WOMAN'S LIFE WITHIN THE EXTENDED HOUSEHOLD

The Oriya Hindu women of the temple town who shared their lives with me are predominantly upper-caste women who belong to families of hereditary priests. Therefore, their views and their moral sense are inevitably upper-caste. Literate in the local language, Oriya, but not necessarily formally schooled, these women have had arranged marriages and have spent their entire lives within the compounds of their natal and conjugal households, having only minimal contact with the world outside.

Life in an Extended Household

While nuclear living arrangements do occur in the temple town, extended households are regarded as the ideal, and there is always a tendency to maintain or move toward such living arrangements rather than the reverse. Such households, most commonly three-generational, numbering at least ten to fifteen people who share a single cooking hearth, break up when either the oldest male or the oldest female member dies. The adult sons set up separate nuclear households, but with the marriages of their resident sons and the births of their grandchildren, their households again become extended.

No woman claims that living in one's husband's extended household, adjusting to it, and assimilating into it is easy: they all see their entry into and life within their conjugal families as a challenge. Success means integrating so well into one's conjugal family that, with time, every member comes to depend on the mature, senior woman. Elaborating on this definition of success and explaining why she rarely goes visiting neighbors, Biraja, a senior woman and the fulcrum of her conjugal family, says, "All these people—sons, daughters, nephews, nieces, sons' wives, husband's younger brothers, grandsons—all will come looking for me. They want me to do this or that, they want to ask me about this or that. That's how it is."[20]

Indispensable to the smooth running of the household, in control of household finances and deciding its expenses, these women are afforded opportunities by life within the conjugal

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family to exercise their skills and expertise as knowledgeable, professional managers.[21] Chhanjarani, a still-married mother-in-law, clearly derives a special sense of pride in her accomplishments. As she told me, "When one is able to take five or twenty-five people along with one, then one gets satisfaction. When a husband and wife live together by themselves, what is there in that? There is no special happiness in that. But if you live within a family with husband's mother, husband's sister, husband's younger brother, husband's elder brother, then there is a special quality to your happiness—there is something special in doing that."

None of the women I spoke to bemoaned their transfer to their husbands' mothers' households as particularly hard to endure. Unlike north Indian women who reportedly describe the practice of women leaving their natal households upon marriage as "this custom of degenerate times," Oriya Hindu women say succinctly, "When we are born as women, it is to live in our *sasu*s' (husbands' mothers') households."[22]

Even more to the point, they identify as their birthplace not their fathers' households, but rather the conjugal households into which they are reborn as wives through the rituals of marriage. This is a remarkable assertion, radically different from that made by the women of Pahansu who, according to Raheja, categorically state, "You know, we never call our *sasural* 'one's own house' (*apna ghar*). We only call our *pihar* 'one's own house.'"[23] When I suggested to Oriya Hindu women that their birthplaces could not possibly be their conjugal households, they protested, saying, "How can you say this is not our birthplace? When we came here we were reborn as *bou*s (sons' wives) and we will die here. This is where our *atman* (soul) will give up (*tyaag*) our bodies—this is our home."

These women remember their childhoods in their fathers' homes with great nostalgia, an idyllic phase of life when they were completely irresponsible, but, as they say, their life's business is bound up in the affairs of their conjugal families. Thus, when talking of the frequency of visits to their natal household, many women say: "Nowadays, I go maybe once a year. In the early days, I used to go much more frequently—three or four times a year; but now what is kept there for me?

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Nothing. Now my life is in this house, with these people; they need my attention and care—the children, husband's mother, husband's father."

Complementarity Between Males and Females

In another noteworthy perception, commonplace in this neighborhood, Oriya Hindus explicitly maintain that male and female are, equally, the causes/sources of what is created. Even the origin story commonly told in this area illustrates this predisposition to see the male and female as playing equal roles in creation.[24] It gives unusual prominence to Devi, the Great Goddess of Hinduism: she exists prior to the male gods. However, she cannot create parthenogenetically. She needs to unite with a male, with Siva, in order to produce new life.

When men and women talk of Devi and Siva's relationship, they say: "Devi is *sakti* (energy/power); Siva has no *sakti* of his own. She is self-existing (*svayambhu*), while Siva takes his *sakti* from her. . . . They need each other, and we can't talk of one without talking of the other. If he is the fire, then she is the energy with which the fire burns; if he is the water, then she is the wetness."[25]

Interestingly enough, the *yoni-lingam*—the phallus within the vagina—is a ubiquitous icon found in many roadside shrines in the temple town, decorated with flowers, among them the hibiscus, Siva's favorite. For Oriya Hindus, this icon symbolizes unequivocally the complementarity between male and female principles, whose union results in all of creation.

Oriya Hindus, therefore, regard both mother and father as contributing equally to the formation of new life. The formal way of referring to "mother" and "father" is as birthgivers—*janani* and *janaka*—reflecting the indigenous belief that a child is created when a man's *bija* (seed) and the woman's *raja* (female seed/secretions) mix. In defense of their position, they provide as evidence the story about the sage Kasyapa and his two wives, the twin sisters Aditi and Diti. They ask, "How could a single father sire both gods, *Aditya*s (the sons of Aditi), and anti-gods, *Daitya*s (the sons of Diti)?" It could only happen, they claim, because the mother contributes more than just

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the womb to grow in; she also provides the female seed. A mother, then, is as much a birthgiver as a father.

The Centrality of Women in their Conjugal Families

Like Hindus elsewhere, Oriya Hindus believe that the primary task of any community is to reproduce itself. They believe that only through perpetuating themselves do human societies transcend the depredations of time. For them, the family represents the most appropriate site for such social reproduction. Therefore, both men and women regard the "domestic domain"—the home and family—as the most vital sphere of human action. More importantly, within family compounds, senior women control and manage all household affairs.

Women are very conscious of the influence they exercise within families, and both they and the men recognize that, ultimately, it is women who hold families together. Women see themselves as embodying the energy/power of Devi, the Goddess, and they are not shy about asserting that a family's material prosperity depends not on what men earn and bring home, but on how women manage the household. Thus, Mamata, a forty-two-year-old mother of four and the most senior woman in her household, says, "If a man were to earn a lakh of rupees today and bring it to the woman, and if she were not to run the household as she should, then despite the money, the household would never prosper. . . . the *Puranas*, the *Bhagwata Purana*, those ancient texts that we read, in those we see that a woman's energy/power (*stri sakti*) is the greatest there is. If that *sakti* is not properly used, a man can do nothing."

From this perspective, a family's prosperity and survival depend less on the men who are born into it and more on the women who, born into other families, marry into it. Women clearly recognize the irony of the situation: they are in-marrying strangers who literally provide lifeblood to the family and who determine its material prosperity. More importantly, they see their contribution to the continuation of the family as significant and transformative: because the womb is more than a space to nourish an unborn child, because a child is created through the mixing of the man's semen and the woman's female

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seed, children share in their mothers' qualities as much as they do in their fathers'.

A related point, and one that I think has crucial significance for the way women relate to their husbands and conjugal families, has to do with the Hindu view of marriage. Marriage is the most important ritual of refinement for Hindus everywhere. Feminist scholars, somewhat obsessed with elaborating on the misogyny they see exemplified in Hinduism, focus almost exclusively on the terrible stigmas attached to being a Hindu widow, ignoring the potent auspiciousness that suffuses a married woman. Widowhood is dreaded precisely because its contrary condition—marriage—is so highly valued and celebrated.

The auspiciousness that all married women embody is marked, in the temple town, by particular signs of auspiciousness (*subha lakhana*) that every married woman wears on her person—glass and shell bangles, silver toe rings, the vermilion in her part as well as on her forehead, black beads around her neck, and brightly colored saris with broad borders. Through wearing these signs, a married Oriya Hindu woman creates a magical aura of protection that maintains her husband's health and long life. These women believe, quite literally, that they are the custodians of their husbands' lives and well-being and of their families' too. I do not know a single Oriya Hindu woman in the temple town, however unhappily married she may be, who has deliberately removed any of these signs of auspiciousness—actions that, according to indigenous thinking, would be tantamount to murder.

Cultivating Self-Control, Being Chaste

A married woman embodies her conjugal family's fund of auspiciousness, and she holds in her palms its future. If she is irresponsible in her management of its resources, the family is ruined; if she is promiscuous, it disintegrates. Spendthrift habits and sexual promiscuity attract repeated misfortunes, guaranteeing a family's final destruction.

Oriya Hindus insist that control over one's appetites—whether greed or lust—must come from within the person. Unlike upper-caste Hindu men from Banaras, Oriya Hindus believe that

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family structures and external checks are relatively ineffective in controlling human behavior.[26] For such control to be truly effective and enduring, the impulse must come from within. There are available culturally defined means that enable one to nurture and cultivate this impulse.

These culturally defined means revolve around two notions: the surrender of one's sense of self (*atma samarpana*), and service to others (*sewa*). Surrendering one's sense of self requires enormous self-control, because one disciplines the importunate cravings of the self through deferring their gratification. And proper service is no less demanding: merely taking care of the physical needs of others in the family is not enough; their peace of mind has also to be ensured, and this requires performing sincere and thoughtful service.

No Oriya Hindu would suggest that these are easy things to do, but the ideas of "surrendering one's sense of self" and "service" encompass many of the explicitly recognized duties of married women in this community. Thus, cooking, serving food, fasting, eating last, eating leftovers, and taking care of the physical and emotional needs of the members of the extended family selflessly—all are expected of married women, all are thought to help them achieve self-control.

However, the most significant virtue that married women strive for is chastity (*satitva*)—it is the most significant because it is hard to achieve and because it is achieved through the most rigorous self-control. Many would echo Mamata when she says: "We have a saying, 'Let there be a 1000 qualities to a woman, but her character is her bulwark' (*hazaro guna roho pochare, striro charitro hou tar osare*). If a woman's character is right, then with the strength of this right character she can do a great deal, even that which is undoable she can accomplish. . . . For a woman to control herself is not such an easy matter, but only she can do it."

The point to be noted, and remembered, is that a woman is responsible for her own chastity. She is chaste not because she lives in an extended family and others exercise a watchful eye over her, but because she disciplines herself for the continuing welfare of her husband and her conjugal family, and, ultimately, for her own happiness.

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FAMILY DYNAMICS IN THE TEMPLE TOWN

Clearly, Oriya Hindu men and women believe that men have a very limited role to play in ensuring a family's survival and its material and spiritual well-being—such matters are determined by the conduct of its womenfolk. More importantly, within these households, as senior women grow powerful, their husbands, whose role is already limited, become mere figureheads to whom formal deference but little else of substance is paid. To the limited extent that men exercise power within the household, they do so as young fathers—the phase during which their mothers' powers are waxing. Given this understanding of family life, it is hard to cast men as oppressors and women as victims, because one would then be positing a ranked dichotomy that neither gender perceives or experiences. Any discussion of those in control and those controlled, then, must be made in terms of the sequence of life-phases, the more senior controlling the activities of the more junior.

As anyone familiar with Hindu India knows, young men, like young women, live with certain constraints. This is not to say that there are no differences between men's and women's lives; there are, the most significant being that men are geographically mobile and can interact freely with unrelated others. But whether women regard this geographical mobility and the freedom to interact as unqualified advantages is doubtful.

Strange as it may sound to modern ears, Oriya Hindu women do not desire to move and interact with people indiscriminately. They value, positively, their lack of geographical mobility and their limited interaction with the outside world, interpreting these features of their lives as signs of their superiority over others, of their independence of the outside world—they do not *need* to meet others, they do not *need* to move around the city or the neighborhood. To shun contact, to maintain exclusivity, confers a mark of distinction on the person who shuns. Many women pitied my predicament in having to do fieldwork, one that necessitated my "wandering." I remember asking Netramani, a middle-aged widow, whether she would be sending her seventeen-year-old daughter to college, and she re-

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sponded good-humoredly, "Why? So that she will become like you wandering from door to door talking to everyone?"

When younger women complain about restrictions on contact and movement, they have in mind restrictions during the early years of marriage on visiting their natal households, on meeting old friends, on standing at the front door and seeing the world go by. They are not thinking of the freedom, say, to go shopping alone, to see a movie by oneself, to walk out of the house unaccompanied whenever one feels like it. Oriya Hindu women find such activities—shopping, seeing movies—pleasurable only to the extent that they are shared with others. They interpret the solitary pursuit of such activities not as freedom but as rejection, as lack of interest and concern on the part of others within the family. Many old widows, at liberty to move freely around the neighborhood or even further afield, hardly value this opportunity: like Sarah Lamb's Bengali widows, all bemoan this freedom as a measure of their lack of centrality within their families.[27]

Gynarchy Rules

Within the family compounds of the temple town, women, particularly senior women, control the flow of life. In terms of who does what, and how and when, senior women dominate and control events. They monitor and regulate the activities of junior women.

Do junior women resist the control exercised by senior women? Do they view it as oppressive? Do they, through "everyday forms of resistance," challenge the control of senior women? Are they like the rural women in Haryana and Rajasthan who are "not radical enough to envision a world without marriage and family," but are sufficiently subversive to question the demands made by patrilineal kinship structures?[28] I hardly think so.

This is not to deny that many junior wives in the temple town do admit that, in the early years of marriage, life is difficult and stressful. But they are quick to emphasize, and unanimous in ascribing their difficulties to, their incomplete assimilation into the conjugal family. Sharing Hindu understandings of the per-

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son as fluid and relatively unbounded, they realize that assimilation requires them to open themselves completely so as to be remade into the substances of their conjugal families.[29]

While it is appropriate for a woman to display modesty and reticence (*lajja*) at most times, the early years of marriage is the one life-phase during which she is supposed to avoid experiencing this particular emotion, at least with her husband's mother and his sisters.[30] Thus, Oriya Hindus say, "If the son's wife thinks, 'Why should I speak of this? I feel too modest to tell anyone about this' . . . she is doing only herself a disservice. . . . If she treats her husband's mother as she would her own, if she opens her mind/heart completely, if she empties herself of all old feelings and thoughts, then the husband's mother too will look on her as a daughter and not as a son's wife."

Furthermore, every woman understands that even the juniormost wife can begin to use her most clearly defined duty, that of cooking and serving family members, to achieve the kind of power needed, first, to make decisions for herself, and later, to make decisions for the family. When a junior woman cooks, serves, and takes care of others in the extended family, she is building relationships and exerting influence in various substantial ways. Her essences and her qualities pervade the food she touches and cooks. By eating the food she prepares, people within the family are transforming themselves, in subtle ways, in her direction. Through every act of cooking, serving, and feeding, she is giving of herself to others within the family, making herself a vital channel within the family body, and bringing others within the ambit of her influence.

"Everyday Forms of Resistance" or Acts of Dominance?

Of course, women do sometimes express discontentment with life within the conjugal family. But in this neighborhood, it is the senior rather than the junior women who express such discontent. Complaining loudly is a powerful tool senior women employ to make their feelings known. Satyabhama, the seniormost woman in her family, a married mother of adult sons, who thinks that the junior members of her family quarrel too much, tells me loudly, so that everyone within earshot can hear: "Everyone thinks s/he is the superior of the other. Everyone

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thinks s/he is the family elder, everyone thinks s/he has to speak out, that s/he has to say what his/her opinion is. I am not preventing others from talking. I am only saying, 'Think of everything before you talk, the person who is talking to you and the consequences of your talking back.'"

And Pratima, another senior woman, the wife of the eldest son, who feels that the younger members of the family pay her insufficient deference, does only what is strictly required of her. She recognizes that the household is not functioning efficiently but refuses to do anything about it. As she says, "Many things don't get done in this house, or if they do get done, they don't get done properly, but I prefer to stay back. I think I could help in resolving our problems—but I let things be as they are, I let things slide."

Through such deliberate behavior, Pratima, Satyabhama, and other senior women make clear their displeasure with situations within their families. Complaining loudly and withholding advice are hardly the "weapons of the weak"; rather, they are explicit expressions of power by dominant women. The defining quality of these acts is that they are neither surreptitious nor subversive. When these senior women choose to withdraw from family discussions and household activities, choose to complain about behavior they consider unacceptable, they do not "sabotage" the structure of power and control within the household. On the contrary, they engage in such behavior to maintain control and ensure cooperation within their world.

In stark contrast, junior wives appear to do nothing to subvert household authority. The reasons are fairly obvious. Having observed, in their fathers' household, their brothers' wives negotiating the process of assimilation, they realize that, as newcomers, to express critical comments in one's conjugal household is foolhardy. They know that candor can be costly, because they do not, as yet, exercise substantial influence and their positions within the family are still too fragile. Spiteful and irresponsible behavior such as cooking and serving "excessively salty meals" would impede their assimilation into the family, something they value greatly and actively seek. It would be a negation of the very principle that inspires most of their actions: too much salt added to the food they cook, food that is

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imbued with their essences, would ruin their attempts to extend their influences through the family.

Interestingly enough, there is no gender component to these expressions of displeasure: senior women do not direct their ire at the men of the household. Feminist scholars misunderstand conflicts within extended families when they identify them as being between women and men, or describe them as women resisting patrilineal kinship structures. Such conflicts as do occur do not emerge along gender lines. Rather, they are almost always between the nuclear subunits of the extended family, each headed by a married son and including his wife and children. Sometimes, they occur between a particular junior woman and the rest of the family—when a woman is not able to accommodate to the demands of living in her conjugal household. Everyone in the temple town recognizes this possibility, but no one imagines that such a case of incompatibility represents something larger, such as systematic injustices against all women.

Thus, senior women, secure in their positions within the family, engage with impunity in verbal and nonverbal displays of discontent: complaining loudly, withholding advice, and not cooperating are ways whereby confident and dominant women express their dissatisfaction and displeasure with what is happening within the family. Junior women do not behave similarly because there is little for them to gain from such a display and a great deal to lose. It hardly makes sense that they should protest and resist positions of power that they are going to occupy in the future and that, more importantly, they know they are going to occupy.

Time Reverses Relationships of Dominance

This brings us to the uniqueness of the relationship between senior and junior women in an extended household. Unlike all other relationships of dominance and subordination—for instance, those between peasants and landlords, or between workers and capitalists—this one reverses itself simply through the passage of time. Junior women who are subordinate today will, with the birth of their children and the entry of still more junior women, promote themselves and be promoted to senior posi-

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tions. The senior women who dominate today will inevitably grow old. Physical infirmity and mental incapacity, the defining conditions of old age, will be exacerbated by widowhood. The junior women of today will come to occupy the central positions of power within the household tomorrow, and they will dominate not only those who are junior to them, but also those who are presently dominant.

In the temple town, most old widows—however powerful they were in the past as married mothers—are relegated severely to the background, expected to contribute nothing to the household and expecting little in return. Sarala, an old, infirm widow of eighty-eight years, feels this neglect acutely. Nowadays, there is little she does for the family; she is not even involved in the worshiping of household gods. As she says: "There is no more praying to God for me. Why? Do you want to know why? God is taken care of nowadays by the sons' wives. Now that they do all that, what is there left for me to do? Nothing."

She reminisces nostalgically about the old days when she exercised great power within the family; at the same time, she recognizes the futility of her longings: "If I can go back to the way I used to live, then I will have peace of mind. I think this inside my mind's mind, but I sit quiet. I don't tell anyone. Who could I tell? Who could give me back that life?"

Other old women appear to have managed the transition from being at the center of the household to being at the margins more smoothly. For instance, Phuladevi, a seventy-two-year-old widow, recognizing perhaps that such transitions are in the nature of things, has relinquished her responsibilities to her sons' wives with little regret. As she says, "Now that I am old, I eat the fistful of rice they give me and I sit. What else is left for me in life? Why should I try to keep the nuisance and trouble of running the household in my head?"

This shift in power from one generation to the next is taken for granted by those who live in the temple town—mothers of married sons know that, sooner or later, they will have to relinquish the supervision and management of household activities to their sons' wives. Such relinquishment allows the senior women to begin their process of disengagement from the house-

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hold and prepare themselves for their final disengagement from the world.

Everyone in this culture shares this future-oriented perspective, viewing life as perpetually flowing forward. When young women marry and enter a new household, they do not see themselves as junior wives forever. Rather, they see other in-marrying women in different phases of the life course, and they see themselves in those phases in the future.

Sandhyarani, a junior wife of only two years' standing, is already looking ahead to the day when her husband's younger brothers will marry and their wives will enter the household. At present, she is the juniormost woman in the household. But she evidently anticipates rising in authority and having to instruct more junior women about their duties. Talking of her present and future responsibilities, she says, "Can I say what's in my heart now? When I am the *sana ja* (junior son's wife)? The youngest? I've just been married. Now elder sister tells me what to do; she decides everything. But when the younger brothers get married, then I will become senior, and then I will have the responsibility of telling the junior wives what should be done, how things should be done. Not now, but after some years."

Clearly, junior wives maintain the structures of household authority today because they see themselves dominating and controlling within those structures in the future; they see no advantage in rebelling against positions of power that they fully expect to occupy.

FEMINISM AND THE ORIYA HINDU WOMAN

Even in the patrilineal, patrilocal community of the temple town of Bhubaneswar, where women, unlike men, do not inherit property, and where they do change their residence at marriage, most of them contrive to lead fairly fulfilling, contented lives. I suggest the reasons they do so are several.

First, their identification with Devi, the Goddess, is a source of substantial self-worth. Like her, they see themselves embodying the energy/power of the universe. The fairly strong *sakta* tradition in coastal Orissa, where the temple town is

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located, guides these self-perceptions.[31] For instance, the fifteenth-century Oriya poet Sarala Dasa, popular even today, articulates this female-oriented *sakta* perspective: his version of the Hindu epic the *Ramayana* (the *Bilanka Ramayana*) diverges from the north Indian one by portraying Sita as transforming herself into Devi, who decapitates the thousand-headed anti-god Ravana while her husband, Rama, stands cowering in the shadows.

Second, these women are universally regarded as being central to the material prosperity and spiritual welfare of their conjugal families. Most people would echo Mamata's words: ". . . for the man, for the children, for everyone, for the family, only a woman's contribution is really crucial." Through feeding family members and producing its future members, these women see themselves, very concretely, as the maintainers and sustainers of life in their conjugal families.

Third, within a few years of marriage, these in-marrying women identify themselves unreservedly with their conjugal families. Their sense of being reborn through marriage is critical to this identification. Their sense of self and personhood emerges from their involvement in the conjugal family. They would, unhesitatingly, agree with Hindu Newaris of Nepal who say, "Interdependency is where you find yourself. In relationships, you discover what and who you are, where you are going, and what you need to do."[32]

Simultaneously, after the first year of marriage, hardly any gifts come from a junior wife's natal household; consequently, her sense of entitlement with respect to that household diminishes rapidly.[33] Her position within her conjugal family rests not on the stream of gifts that flow from her natal household, but on the appreciation she earns through successful assimilation. As Ranjana, a young woman on the eve of her marriage and departure from her natal household, observes dispassionately, "Our parents haven't given us our *karma*, they have given us only birth (*janma*). They have given me birth, and they have also given me learning (*sikhya*) and competence (*jogyata*)—that is my good fortune (*bhagya*). Now with that, if I do good work in their household, then it will arouse their appreciation.

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If I don't do good work, they will criticize me and I will have to endure that. But it is all in my hands. If I want to do good and gain appreciation, it is in my hands."

For Oriya Hindu women, success or failure in life depends on their efforts. When they embed themselves selflessly in their conjugal families, they are rewarded by power and prestige as they mature and age. Their sense of identity and self-worth comes from being valued members of the conjugal family, universally acknowledged as vital to its well-being.

CONCLUSION

The only successful mass movement in India's history has been the independence struggle. It was a mass movement because its overarching goal—freedom from colonial rule—blurred the differences that separated people. In contrast, feminists seek to inspire a mass movement by dividing families, separating Hindu women from their male kin by categorizing the latter as oppressors. When feminists challenge family structures and work to dismantle them, the women of the temple town see such efforts as directly threatening their sense of identity and personhood. They do not see their conjugal families as oppressive kinship structures but rather as fluid, organic entities that are continually transformed and reconstituted by the essences and qualities of in-marrying women.

Feminists themselves today acknowledge that they have had little success in mobilizing Hindu women. Most, however, prefer to believe that this failure is more apparent than real. Reluctant to accept the possibility that feminism, as it is defined and understood in the West, does not necessarily have universal meanings, they assert that Hindu women, conscious of their subordination, are biding their time waiting for an opportune moment to rebel against the patriarchy. This understanding is itself telling, because it exemplifies feminist misunderstanding of Hindu cultural reality. Feminists misinterpret the "acts of resistance" that Hindu women supposedly perform. Their assertion that such behavior indicates women's consciousness of being exploited by men carries little credibility. In the temple town, it is powerful senior women who demonstrate discon-

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tent—not junior women. Moreover, it is not directed at the men of the household but is deliberately displayed to dominate and control more effectively everyone in the family. Senior women do this fully aware that their hold on power is transient, that sometime in the not-too-distant future they will relinquish power to those who are junior now. Not surprisingly, junior women wait expectantly in the wings, seeing no need to resist or rebel, either covertly or overtly, disinterested in fighting for a radical reordering of social arrangements.

ENDNOTES

[1]By "feminist" I am referring to those Western/Westernized activists and scholars, predominantly women, who target Hindu cultural traditions as the root cause of gender injustices and exploitation on the Indian subcontinent today. Their goal is "absolute and complete equality as far as is humanly possible in any given situation, at any given time." See Vasudha Narayanan, "Women of Power in the Hindu Tradition," in Arvind Sharma and Katherine K. Young, eds., *Feminism and World Religions* (Albany, N.Y.: State University of New York Press, 1999), 26. There are others working to improve the lot of Indian women, but—and this is a crucial difference—these people are working not for gender equality but for female empowerment. They explicitly distance themselves from Western feminism—the most famous such example being Madhu Kishwar, editor of *Manushi*, a journal about women and society in India (see Kishwar's article "Why I Do Not Call Myself a Feminist," *Manushi* 61 [Nov.–Dec. 1990]: 5). They believe that feminism, as an intellectual perspective and a movement, is located in a particular historic and sociocultural context and, therefore, has little relevance in contemporary India. They further believe that the potential for radical social transformation in India can be found within indigenous cultural traditions—one need not look westward for inspiration. On the reactions of feminist activists in India, see also Tanika Sarkar and Urvashi Butalia, eds., *Women and Right-Wing Movements: Indian Experiences* (London: Zed Books, 1995).

[2]On "politicized religion," see Patricia Jeffrey and Amrita Basu, eds., *Appropriating Gender* (New York: Routledge, 1998).

[3]The Bharatiya Janata Party is the nationalist Hindu party; Ram is an incarnation of the Hindu god Visnu. Patricia Jeffrey, "Agency, Activism and Agendas," in Jeffrey and Basu, eds., *Appropriating Gender*, 221.

[4]As those familiar with Hindu India are quick to point out, the term "Hindu" is itself problematic and highly contested. I use the term "Hindu" to classify those ideas, customs, and practices that are part of Brahmanical traditions and followed by the highest Hindu caste, the Brahmans, who constitute roughly 3 percent of India's population.

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[5]On these cultural distinctions, see Richard A. Shweder and Edmund J. Bourne, "Does the Concept of the Person Vary Cross-Culturally?" in Richard A. Shweder and Robert A. LeVine, eds., *Culture Theory: Essays on Mind, Self, and Emotion* (Cambridge: Cambridge University Press, 1984); Hazel Markus and Shinobu Kitayama, "Culture and the Self," *Psychological Review* 98 (1991): 224–253.

[6]Carol Gilligan, *In a Different Voice* (Cambridge, Mass.: Harvard University Press, 1993), 149.

[7]Ibid.

[8]Vanaja Dhruvarajan, *Hindu Women and the Power of Ideology* (Granby, Mass.: Bergin and Garvey, 1989); Patricia Jeffrey, *Frogs in a Well: Indian Women in Purdah* (London: Zed Press, 1979); Vivienne Kondos, "Subjection and Domicile," in John N. Gray and David J. Mearns, eds., *Society from the Inside Out: Anthropological Perspectives on the South Asian Household* (New Delhi: Sage Publications, 1989).

[9]On the Hindu woman as victim, see Rajeswari Sunder Rajan, *Real and Imagined Women: Gender, Culture, and Postcolonialism* (London: Routledge, 1993); Radhika Balakrishnan, "The Social Context of Sex Selection and the Politics of Abortion in India," in Gita Sen and Rachel C. Snow, eds., *Power and Decision: The Social Role of Reproduction* (Boston: Harvard Center for Population and Development Studies, Dept. of Population and International Health, Harvard School of Public Health [Cambridge, Mass.]: Distributed by Harvard University Press, 1994).

[10]See James C. Scott, *Weapons of the Weak: Everyday Forms of Peasant Resistance* (New Haven: Yale University Press, 1985). In his fascinating ethnography of the Malaysian village Sedaka, Scott argues that peasants here are not victims of false consciousness because they are aware that landlords exploit them. They demonstrate this awareness by continually engaging in acts of resistance, small and relatively risk-free—foot-dragging, non-cooperation, non-communication. On Hindu women specifically, see Kumkum Sangari and Sudesh Vaid, eds., *Recasting Women: Essays in Colonial History* (New Delhi: Kali for Women, 1989); Gloria Goodwin Raheja and Ann Grodzins Gold, *Listen to the Heron's Words: Reimagining Gender and Kinship in North India* (Berkeley: University of California Press, 1994); Douglas Haynes and Gyan Prakash, eds., *Contesting Power: Resistance and Everyday Social Relations in South Asia* (Delhi: Oxford University Press, 1991).

[11]Jeffrey, *Appropriating Gender*, 222.

[12]Raheja and Gold, *Listen to the Heron's Words*, 26.

[13]See Jeffrey, *Appropriating Gender*, 232 (quote) and 231.

[14]Ibid., 232.

[15]Usha Menon and Richard A. Shweder, "The Return of 'White Man's Burden,'" in Richard A. Shweder, ed., *Welcome to Middle Age! (And Other Cultural Fictions)* (Chicago: University of Chicago Press, 1998), 140. The word *Oriya* refers to a particular linguistic and cultural group—the Oriyas.

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[16]Ibid.; see also Susan C. Seymour, *Women, Family, and Child Care in India: A World in Transition* (Cambridge: Cambridge University Press, 1999); and Richard A. Shweder, *Thinking through Cultures: Expeditions in Cultural Psychology* (Cambridge, Mass.: Harvard University Press, 1991).

[17]On Hindus elsewhere, see McKim Marriott, ed., *India through Hindu Categories* (New Delhi: Sage Publications, 1990); Sarah Lamb, "Growing in the Net of Maya," Ph.D. dissertation, University of Chicago, 1993.

[18]Ronald B. Inden and Ralph W. Nicholas, *Kinship in Bengali Culture* (Chicago: University of Chicago Press, 1977); E. Valentine Daniel, *Fluid Signs: Being a Person the Tamil Way* (Berkeley: University of California Press, 1984).

[19]McKim Marriott, "Hindu Transactions," in Bruce Kapferer, ed., *Transaction and Meaning: Directions in the Anthropology of Exchange and Symbolic Behavior* (Philadelphia: Institute for the Study of Human Issues, 1976).

[20]All translations of the women's words are my own.

[21]Men earn money, but, almost without exception, they hand over their earnings to the senior woman of the household.

[22]On "this custom of degenerate times," see Raheja and Gold, *Listen to the Heron's Words*, 187.

[23]Ibid., 104. *Sasural* is the husband's parents' household and *pihar* a married woman's natal village. Given the patrilocal system of north Indian society, these women apparently suffer from a permanent sense of dislocation.

[24]This story can be found in the *Siva Purana*, one of eighteen *Puranas*, each being a collection of stories and ritual lore thought to date back to the medieval period.

[25]My translation.

[26]On the Banaras men, see Steve Derne, "Hindu Men Talk About Controlling Women," *Sociological Perspectives* 37 (1994): 203–227.

[27]Lamb, "Growing in the Net of Maya."

[28]Raheja and Gold, *Listen to the Heron's Words*, 123.

[29]This process of remaking the substance of the woman is begun explicitly during marriage rituals and is symbolized, at least in upper-caste Oriya Hindu families, by the new name that is given her at this time.

[30]On *lajja*, see Usha Menon and Richard A. Shweder, "Kali's Tongue," in Shinobu Kitayama and Hazel Markus, eds., *Emotion and Culture: Empirical Studies of Mutual Influence* (Washington, D.C.: American Psychological Association, 1994).

[31]A *sakta* is a devotee of the Goddess, Devi (or Sakti).

[32]Steven M. Parish, *Moral Knowing in a Hindu Sacred City: An Exploration of Mind, Emotion, and Self* (New York: Columbia University Press, 1994), 129.

[33]This is strikingly different from the practice in north India; see Raheja and Gold, *Listen to the Heron's Words*.

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Cultural differences are beautiful, but they have nothing to do with the law. We can't possibly have a set of laws for Americans, a set of laws for immigrants, and a set of laws for tourists (Marceline Walter, director of community education in the New York State Administration for Children's Services).

M. Ojito

From "Culture Clash: Foreign Parents, American Child Rearing," *New York Times,* 29 June 1997
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The current battle over bi-lingual education is the latest chapter in a long history of absorbing "un-American" elements into the cultural mainstream. It is characteristic of this process, as our culture has evolved from pristine Anglo-Saxonism to the "ethnic melting pot," that some members of cultural and racial minorities have been champions of assimilation. But more and more, people have come to identify cultural assimilation as the problem rather than the cure.

Nomi M. Stolzenberg

From "He Drew A Circle That Shut Me Out: Assimilation, Indoctrination, and the Paradox of a Liberal Education," *Harvard Law Review* 106 (1993)
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David L. Chambers

Civilizing the Natives: Marriage in Post-Apartheid South Africa

SOUTH AFRICA IS A LAND OF MANY CULTURES. For several hundred years, British and Afrikaaner whites controlled the country, systematically manipulating black people to the whites' advantage. For the most part, however, whites tolerated the continuation within black communities of traditional marriage practices that white Christians considered uncivilized. In 1994, South Africa changed governments. A black majority Parliament came to power, adopting a constitution dedicated to equality and human dignity. Four years later, Parliament adopted a new marriage law that, though permitting some of the external trappings of the traditional marriage system to continue, eliminated by law much of the core of its male-centered rules.

From the point of view of the legislators who voted for it, the new law was required in order to promote gender equality under the new constitution. From the point of view of traditional leaders and some other rural dwellers, the new law was unjustifiable because it failed to honor black people's traditions in a new black South Africa. This essay is about points of view—the multiple points of view of South Africans, and the point of view of one admiring American, who is trying to understand.

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This essay is part of a forthcoming volume, The Free Exercise of Culture, *edited by R. Shweder, M. Minow, and H. Markus.* *© Russell Sage Foundation. All rights reserved.*

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THE CUSTOMARY RULES AND PRACTICES

About 78 percent of South Africa's population is black, about 12 percent is white, and the rest is primarily Indian or of mixed race, called "coloured." Nearly half of all black Africans still live in rural areas, the great majority in traditional groups headed by hereditary kings or chiefs and by headmen and subchiefs. The largest of these groups are the Zulu, the Xhosa, the Pedi, the Sotho, the Tswana, the Tsonga, and the Swazi. All are hierarchically organized, and, in nearly all, only men can be chiefs or senior counselors.

Each of these cultural groups has its own customs and rules—rituals and practices at birth, at the coming of age, at marriage, and at death. Indeed, within each group are subgroups with their own variations. The customary rules are not unalterable. Though certain common patterns persist through time, the actual content of rules—the so-called customary law—is revealed at any given time through the practices of the people who live by them, and practices change with changing conditions. Whether these practices are appropriately regarded as "law" is debatable, for they have no definitive textual form and are modified over time by the actions of those who adhere to them.[1] Still, Africans of all sorts speak as if these practices were "law," and, as we will see, South Africa's new constitution itself directs courts to apply "customary law" in appropriate circumstances. The chiefs, of course, also believe in customary laws and consider themselves the authoritative voice of their content. They or other senior leaders preside over local customary courts where they apply their view of the "law" to resolve disputes. Most black South Africans who live in rural areas follow customary practices in their daily lives. For them, the chiefs still play central roles as the keepers and promoters of traditions and as political leaders. In last year's parliamentary elections, for example, the presidential candidates of all the major national political parties courted the traditional chiefs because they believed that the chiefs could deliver large numbers of votes.

During the years of white rule, the only sort of coupling relationship denominated as "marriage" by law was the form

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of Christian or civil marriage that white people practiced. The rules for entry into civil marriage and the legal consequences of it are similar to those in the United States. After changes in the law that were completed only in the 1980s,[2] women in civil marriage have full legal capacity to enter into contracts and to hold property in their own names. Neither husband nor wife can marry any other person while they are still married to each other. And they can exit from the marriage only by securing a divorce through a court that applies community property rules to divide their assets, determines whether one should make additional periodic payments to the other in the form of alimony, and decides who will have custody of their children.

During the twentieth century, black South Africans who wished to marry had a choice. They could marry under civil law, and indeed, by the mid-twentieth century, many black Christians did so. (Most blacks who married under civil law also observed some customary marriage rituals as well.) The remaining black South Africans, probably close to a majority even today, marry solely within the customary group of which they consider themselves a part.

The customary rules determining how a marriage is formed vary widely across groups but share common characteristics, many of which reach back many centuries.[3] At root, customary marriage marks not the joining of two individuals but the joining of two families or two kinship groups and is a vehicle for ensuring the continuation of the male's family line. In nearly all groups, the groom or members of his family enter into highly stylized negotiations with the parents of the bride and agree on an amount of bridewealth, called *lobolo, bogadi,* and various other names (hereafter, *lobolo*), that the groom will convey to the parents of the bride. In the past, the *lobolo* was nearly always paid in cattle. Today the parties nearly always agree on a sum of money, though the amount is still commonly determined by the current cost of a certain number of cows. The equivalent of several hundred American dollars would be a common figure. That is a very large sum for most black South African men in their twenties.

Upon payment of all or part of the *lobolo,* the performance of ceremonies that vary widely, and, in some groups, a period of

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cohabitation or the birth of a child, the couple is considered married within their customary group. They were never, however, considered "married" under the laws of South Africa. Instead, they were treated as partners in a mere "customary union," which was a legally recognized relationship that carried consequences for pensions, taxation, and so forth, but civil "marriage" was accorded higher legal status.[4]

Just as the rules of *lobolo* were determined by customary law, so too were most of the consequences of a customary marriage.[5] As a broad generalization, in nearly all these groups, a woman upon marriage became a part of the husband's family and shifted from living under the control of her father to living under the control of her husband, her mother-in-law, and the head of her husband's family. Any children of the marriage became part of the husband's family. She had no power to enter into contracts or to own property in her own name. She could appear in a tribunal only through her husband or the head of her husband's family. Her husband was free to marry additional women, but she was not free to marry additional men. If a wife left the marriage, her parents would usually be expected to repay or return all or part of the *lobolo,* and any children would remain with the husband or his family. If she outlived her husband, she would not inherit his property. Rather, a male member of his biological family—his oldest son, his brother, his father—was considered the only appropriate heir, though the heir was obliged to provide in some way for the widow. In some groups, the widow was expected to marry another male member of her husband's family, especially if she had not yet borne any children. This was the custom of levirate marriage.

The cornerstone of the customary marriage system is the *lobolo* transaction. *Lobolo* retains positive and complex meaning to most black Africans, including most urban black Africans.[6] It stands variously as a symbol that the wife is valued, as a mark of the bond between families, as compensation to the bride's parents for the cost and effort to raise her, and, today, as a symbol of continuity with African traditions. For married women, it remains an important source of status in both rural and urban areas, despite the fact that some practices, such as levirate marriage, grow out of a view that the husband's fam-

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ily, through the payment of *lobolo,* has acquired the woman's reproductive capacity (yet another "meaning" of *lobolo*).

Do women who live in rural customary groups today lead lives of subordination and degradation? That is a difficult question to answer, not solely because of the difficulty of deciding what should count as a degrading life. I have done no empirical work of my own in the rural areas, and though many studies have been written about the experiences of black South African women, few are available that are recent and methodologically rigorous.[7] It is certainly easy to find accounts from the twentieth century of women who saw themselves as having been "sold" by their fathers to an older man they did not know, who experienced intercourse with him as a physical violation, and who were treated much like a servant.[8] At the same time, most accounts of women's lives are mixed but more positive. H. J. Simons, one of the most thoughtful white South African observers of customary practices, believed that in circumstances in which rural husbands and wives lived in an extended family of the husband's, most women, while not equals, were at least "junior partners in a joint family enterprise."[9] The system of rules, when it worked, ensured that no woman was without a man responsible for her well-being. And, during the marriage, especially after bearing children, women typically exercised considerable authority in the operation of their households. The beleaguered new wife became the powerful mother-in-law a generation later. Customary unions continued to be potentially polygamous, but fewer and fewer men could afford second wives.

By the mid-twentieth century, however, large numbers of black Africans no longer lived in rural settings or in extended family arrangements, and the practice of male control of wealth no longer matched many urban or rural women's lives or needs. Many black women lived in cities and worked in the labor force—primarily as domestic workers—were paid directly by their employers, and controlled the income they earned. Large numbers of rural men worked in the cities or mines and provided neither support nor protection for their wives who remained in the country. Polygamy was frequently a warped parody of its earlier form: many men took a wife in the country,

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then moved to the city, leaving wife and children behind, and married again.

By moving to the cities, many women (and young men) largely evaded the control of the male elders, but many rural women still suffered under the old practices. Some stayed in marriages they wanted to leave because of pressure from their fathers, who sided with their husbands and who did not want to return *lobolo*. Others were left without resources on the death of their husbands when a male relative of the husband claimed the family assets but failed to provide for the widow's care. Moreover, the tradition of male dominance, coupled with the decline of extended family living arrangements, has probably contributed to the extremely high levels of physical abuse to which African men subject their wives.[10]

To be sure, among white South Africans married under civil law, it is equally debatable whether wives experience the equality in their relationships that the official rules now proclaim. In South Africa as elsewhere, white men earn more than white women, and neither British nor Afrikaner South African men are known for egalitarian attitudes toward marriage. Still, by the 1990s, married women were formal equals under the common-law rules but not under the customary practices.

DOMINANCE AND TOLERANCE

The story of the positions South African colonial settlers took toward customary rules and practices during the nineteenth and twentieth centuries is far too complex to relate in a short essay.[11] As a broad generalization, the British and Afrikaner settlers regarded black African marital practices as barbaric—at worst, *lobolo* as a transaction in which a man sold his daughter into slavery, polygamy as uncurbed lust—but in the end colonial and settler governments generally tolerated the practices because, in a context in which blacks greatly outnumbered whites, tolerance was consistent with efficient administration.[12] The British secured the reluctant loyalty of the chiefs by protecting the chiefs' authority. The chiefs in turn applied the customary rules to their peoples, who provided an inexpensive source of labor to white farmers and households. As stated

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by Theophilis Shepstone, architect of the British policy in Natal, "The main object of keeping natives under their own law is to ensure control of them. You cannot control savages by civilized law."[13]

As part of their system of control, the British government created special "native" courts to apply customary law in disputes between black South Africans. In some parts of the country, the customary rules were codified by British lawmakers, who learned the rules from chiefs and other headmen and rendered them into English legal language that was often inaccurate in translation and often more male-centered than actual practice.[14] Courts routinely applied these codified customary rules, but, even so, there were limits on the degree to which they were willing to give such rules legal effect. In each of the ordinances and statutes that authorized courts to apply customary laws in suits between blacks, a proviso always directed the court not to do so when it found a particular custom "repugnant to the general principles of humanity recognized throughout the whole civilized world"[15] or "opposed to the principles of public policy or natural justice."[16] In addition, the same courts refused to treat women within customary unions as wives for purposes of certain common law and statutory benefits. For example, unlike a wife in a civil marriage, a customary spouse could not collect from certain statutory insurance funds on the death of her husband in a motor vehicle accident.[17]

By the late twentieth century, courts rarely invoked the repugnancy clauses and Parliament had extended some statutory benefits of civil marriage to spouses in customary unions. The unions of rural black people were accepted as "marriages" by all the people who mattered to them, and, for most, the state recognized their relationship in the few contexts in which it made any difference. Unlike the U.S. government in its campaign against the Mormon church in the late nineteenth century, the whites in South Africa, however brutal their policies, never declared polygamy a crime for people living in customary unions, never prosecuted and imprisoned thousands of polygamists or drove thousands of others into hiding, and never sought to remove the children of polygamous parents on the grounds that their practices were inherently harmful.[18]

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THE NEW CONSTITUTIONAL ORDER

After World War II, the Afrikaner-led National Party won control of South Africa's government and, over time, imposed its apartheid policy of rigid segregation. Blacks ceased to be citizens of South Africa. Those who were needed by whites for labor were forced to live as migrants at the mines or in all-black townships outside the cities, and those who were not needed were relegated to "homelands" ruled by black leaders who were in large part puppets of the South African government. In 1994, after years of internal struggle and international condemnation, the National Party agreed to relinquish control to the black majority. Parliament adopted a new constitution, called the Interim Constitution, hammered out between the National Party and the African National Congress (ANC) with the participation of other smaller parties, and the homelands were reabsorbed into South Africa. The promulgation of the Constitution led directly to the elections in 1994 in which black South Africans, voting for the first time, brought a black-controlled government into power. Two years later, in 1996, a Final Constitution was adopted, drafted by a committee of Parliament dominated by the ANC.

The Interim and Final Constitutions sound many themes—individual freedom, human dignity, universal suffrage, reconciliation between racial groups, a parliamentary system of government—but no theme is sounded more forcefully than that of equality. That is hardly a surprise given the nation's sordid history. Somewhat surprising to many, however, is that the new constitutions emphasize equality based on sex as strongly as they do equality based on race. The prominent place of sex equality grew out of the ANC's adoption in the 1960s of Western human-rights ideology as well as the participation of South African women and women's groups in the anti-apartheid liberation efforts and in the negotiations over the Constitution.[19]

As completed, the Interim Constitution opens with these words:

> In humble submission to Almighty God,
> We, the people of South Africa declare that—
> WHEREAS there is a need to create a new order in which all South Africans will be entitled to a common South African citizenship in

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> a sovereign and democratic constitutional state in which there is equality between men and women and people of all races so that all citizens shall be able to enjoy and exercise their fundamental rights and freedoms . . .

Similarly, the first substantive section of the Bill of Rights in the Final Constitution provides that "everyone is equal before the law and has the right to equal protection and benefit of the law," and continues by declaring that neither the state nor any person may: ". . . unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth."[20]

The Constitutions' drafters were well aware of the potential impact of the equality clauses on the gender-based family rules of the customary groups. So too were the traditional leaders. In the deliberations, the leaders advocated that customary rules, and particularly customary family rules, be treated as a separate system of laws exempt from the Constitution.[21] The chiefs and other traditional leaders argued that traditional ways, tolerated but demeaned during apartheid, deserved to be embraced in a new black nation.

As eventually adopted, however, the Interim and Final Constitutions took a quite different approach to the customary leaders and customary rules. The drafters—though many considered themselves members of the customary groups—held less positive views than the chiefs about the customary rules and about the chiefs themselves. Many of the new black members of Parliament viewed themselves as fortunate to be city dwellers today, free of the day-to-day control of their male elders. Many of the new members who were women dismissed the traditional leaders' call for a revival of African identity and customs as a ruse to justify the continued repression of black women.[22] Moreover, many ANC members, including many black members, had spent the previous three decades condemning appeals to ethnic affiliations, because the white apartheid government had exploited such appeals to divide black South Africans against themselves.

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In the eyes of the ANC, many of the tribal leaders themselves stood in a morally ambiguous position. Many were viewed simply as old men selfishly protecting their own power and as social conservatives out of step with progressive ideas. The version of customary law they defended was, in the views of many, inauthentic, distorted in the last century by the interaction of patriarchal black male elders and patriarchal white male colonial judges and administrators. Worse, many leaders had, before and during the apartheid era, entered into a Faustian bargain with the white government, under which they were permitted to retain control over the members of their groups only so long as they refrained from supporting the ANC efforts to overturn the existing regime. A few of the traditional leaders in Parliament had been celebrated opponents of apartheid, but others, many of whom were members of the Zulu-dominated Inkatha Freedom Party, were seen by the ANC as collaborators with the white rulers.

Thus, in the end, the Final Constitution, adopted by a black-majority Parliament, reflects a mixed view of blacks' own traditional cultures. On the affirming side, the Final Constitution declares that the country's official languages, formerly Afrikaans and English, were now to be "Sepedi, Sesotho, Setswana, siSwati, Tshivenda, Xitsonga, Afrikaans, English, isiNdebele, isiXhosa, and isiZulu."[23] The Constitution further guarantees to all the right "to participate in the cultural life of their choice" and directs courts to "apply customary law when that law is applicable."[24] It even provides that "the institution, status, and role of traditional leadership, according to customary law, are recognized."[25] On the other hand, the Constitution simultaneously makes customary rules and the traditional leaders subordinate to Parliament and the Bill of Rights. Yes, all citizens have the right to participate in the cultural life of their choice, "but," continues the same provision, "no one exercising these rights may do so in a manner inconsistent with any provision of the Bill of Rights," and the traditional leadership may continue to hold their offices but "subject to the Constitution." And yes, courts are to apply customary law, but they are to do so "subject to the Constitution and any applicable legislation that specifically deals with customary law." Customary law, that is,

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may be changed by Parliament as freely as it can change judge-made common law or its own prior legislation.

Given these constitutional provisions, it may appear that the old gender-based customary family rules must be rejected today as unconstitutional, inconsistent with the equality clause of the Bill of Rights. And perhaps the new Constitutional Court will someday so hold. But remember that the Constitution does not prohibit all discrimination, only discrimination that is "unfair."[26] And even "unfair discrimination" (an elusive notion under the court's early jurisprudence)[27] will be tolerated if the state can demonstrate that a discriminatory regulation comes within the terms of a general limitations clause in the Constitution that permits restricting any of the rights in the Bill of Rights "to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality, and freedom."[28]

THE RECOGNITION OF CUSTOMARY MARRIAGES ACT OF 1998

In November of 1998, four years after coming to power, Parliament adopted new legislation regarding customary marriage. The legislation was developed for Parliament by the South African Law Commission, a government agency long in existence but reconstituted under the new government. The commission in turn appointed a project committee that developed the proposal. When the committee began its work, the members agreed that "customary unions" entered into in the past would be relabeled as "marriages." No more separate and unequal. About marriages entered into in the future, however, the commission was more uncertain how to proceed and received many suggestions from academics and groups. At the extremes, two quite different models were available.

The committee might have recommended that Parliament adopt a single national law of marriage that prescribed for all South Africans the requirements and consequences of marriage, just as nearly all states in the United States have a single statutory form of marriage. Couples would be free to conduct their marriage ceremonies any way they wished—the delivery of cattle, an exchange of vows in church, a feast of goat, a five-

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tiered cake, whatever—but the requirements of a legally valid marriage, the registration system and the legal effects of marriage, would be the same for all. As the new uniform law, Parliament might have cast into statutory language the rules of one of the customary groups or some amalgam of customary rules. Or it might have adopted for everyone the existing civil law under which whites and Christian blacks typically married.

Such an approach was conceivable, but the committee never seriously considered it. No one set of rules could be acceptable to all groups. Each customary group was proud of its practices and would not have given them up lightly for some other customary group's rules. Zulu practices could not be privileged over Xhosa, or Xhosa over Zulu. By the same token, South African Christians would have found unacceptable any system in which a husband could have more than one wife.

The second idea was simply to declare that all unions and marriages were henceforth considered marriages and, for the future, leave to each couple to choose the marital regime under which they wished to be united. All systems would be recognized as equal, and the state would enforce the rules of the marital system chosen by the couple or empower the tribunals of the group to enforce those rules. This, roughly speaking, is the approach that has been taken in Israel regarding Islamic and Christian marriages.

This approach had much more appeal to the committee. It was also the approach that the chiefs and other traditional leaders of the customary groups wanted. But it was one that, in its purest form, was unacceptable to many liberals and feminists, both black and white, for in their view many of the customary rules bearing on married women were intolerable and unconstitutional. In fact, some women had fought for the gender equality language in the Constitution as much to secure equal rights at home as to secure equal rights in the public sphere.[29]

In the end, the committee and commission, after receiving written comments from a large number of individuals and groups, recommended a middle course—and Parliament in turn accepted the commission's recommendations.[30] As adopted, the first substantive section of the act—called the Recognition of

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Customary Marriages Act of 1998—declares that all customary unions entered into in the past are relabeled "marriages" and that, for the future, all customary marriages that comply with the provisions of the act are valid. The rest of the act regulates the content of customary marriage. Three themes dominate. The first is to ensure that each partner truly chooses to marry. Marriage must be with "consent." The second is to declare women and men formal equals within the marriage relationship. In the absence of a prenuptial contract, spouses in customary marriages will be treated as holding property equally as community property. Married women are given the power to acquire and dispose of assets, to enter into contracts, and to litigate in their own names. The final theme is to inject the state bureaucracy into the regulation of customary marriages, first by requiring that all marriages be registered with a government agency and second by permitting divorce only when it is granted by a family court judge. The judge will divide the couple's property, award alimony where appropriate, and decide which parent is the more appropriate custodian for the children.

Within this structure, some important aspects of customary marriage are permitted to continue. Most significantly, the customary groups are free to retain *lobolo* as a condition of a valid marriage. In addition, child marriage can still occur if a group's rules permit it and if, in the particular case, the child "consents" and both parents concur. Levirate marriage—the widow's marrying of her late husband's brother—can still occur as long as the widow consents. And even polygyny is permitted to continue as long as the interests of the first wife are protected. A man may have a valid second marriage during the course of a first marriage as long as he enters into a written contract with his first wife fairly dividing the property accrued to that point and persuades a family court, after a hearing, that the contract is equitable to everyone concerned.

How much of customary marriage remains? If *lobolo* is the heart of customary marriage, customary marriage still has its heart. If polygyny is of symbolic importance even if in decline, it too survives. From another perspective, however, the new act maintains the trappings of customary marriage but empties it of most of its content. Women are now the formal equals of men.

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Customary courts no longer have any formal authority to resolve disputes. The act replaces a patriarchal view of marriage with a partnership view. Even the polygamy provision is structured to make sure that the first wife or wives get their full share of the partnership out of the marriage up to that point. And, although customary courts may perform mediation, they cease to have any formal authority to order a resolution of a marital dispute.

DEMOCRACY AND THE RECOGNITION OF MINORITY CULTURES

Two quite different views might be taken of the process that produced this revolutionary legislation and of the substance of the act itself.

The first would be to regard it simply as a healthy example of democracy in action. Writing thirty years ago, Simons believed that in the face of the changes wrought by a market economy, both polygamy and *lobolo* had outlived their original protective and communal functions and ought to be reformed or abolished, but he also believed that "Africans themselves, and not an all-white legislature, should bring about the change."[31] The new law is, to use Simons's term, genuinely a work of "Africans themselves."[32] The majority of the members of the new Parliament are black. If they are married, *lobolo* was almost certainly negotiated. The act can thus be seen as law reform from the inside, by a legislature elected by all the people, including the rural black people most affected by it. Indeed, some black South Africans regard Mandela, Mbeki, and the other black Parliament members as the democratically elected successors to the hereditary chiefs.

The content of the act can also be defended substantively as paying just the right level of tribute to tradition. Most black South Africans, both women and men, accept the ceremonies and financial transactions associated with becoming married that are preserved by the new legislation. The social meanings of these transactions are changing with time and are less oppressive today to women than in the past. On the other hand, the act appropriately repudiated the old limitations on married women's capacities to contract, inherit, hold land in their own

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names, and appear in court. These rules not only constricted women's position within the home and family but also curtailed women's dealings with third parties not part of their group. They were also the rules whose historic authenticity had been most discredited and whose boundaries today are most contested in the daily lives of the members of the groups. The new law thus enables black urban and rural women to enter into marriage through the familiar *lobolo* rituals that they accept, while empowering them as legal equals in the private and public sphere. Over time, *lobolo*, like the engagement ring in Western cultures, may be transformed into a symbol simply of affection, commitment, and respect.

A second view of the new legislation is quite different in that it regards it as the suppression of minority cultures. The customary groups are now a nonurban minority of the population who did not genuinely exert a voice in the legislation. As a formal matter, the Parliament of South Africa, like the Parliament of some other democracies, is not elected by districts. Each party creates a nationwide list of candidates, voters cast one vote for their party of choice, and each party gets a number of seats in Parliament roughly equal to the percentage it receives of the total vote. A considerable majority of the ANC members of Parliament are urban dwellers.

Of course, urban Parliament members might seek the views of rural people and adopt legislation that serves their needs, but Parliament in adopting this legislation relied on the Law Commission, and the commission in turn had little systematic information about the opinions of rural dwellers. Many rural residents will welcome the legislation as adopted, but others will not. It is not the old men alone who believe in the traditional ways. In much of Africa, rural women are the community's most rigorous enforcers of customs that appear to outsiders to subjugate women.[33] From the point of view of some practitioners of customary rules, the passage of the Recognition of Customary Marriage Act must contain a bitter irony: for two hundred years, white governments oppressed black people but at least permitted them to practice their old family ways; no sooner did a black-controlled government take over than it gutted its peoples' own traditions—"recognition" by eviscera-

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tion. Patikile Holomisa is a member of Parliament, a traditional chief, a controversial politician, and president of the Congress of Traditional Leaders. After the drafting of the Final Constitution, he lamented, "Such is the tragedy of postcolonial Africa that, after attainment of freedom, its political leaders find it easy, convenient, and acceptable to adopt the political system of their erstwhile oppressors and yet find it difficult and problematic to restore indigenous forms of rule."[34] In his view, the black ANC members of Parliament had swallowed feminist and liberal ideologies foreign to Africa and inimical to its way of life. To him, the Parliament members were much like the British judges of a century before who had rejected some customary marriage practices as "repugnant" to civilized society.

As Holomisa's critique suggests, the new legislation dishonors the customary groups in a more fundamental way than by simply changing the substantive rules of marriage. It also changes who makes the decisions about the rules, for the system of customary rules rested on living practice, with the traditional leaders influencing its shape through their role as resolvers of disputes. They were lawgivers. The new legislation takes the decision about the content of rules out of the fluid process of living practice and takes the job of judging out of the hands of the traditional leaders.

Which view of the legislation is more accurate? That it was the sound product of a sound process? Or that, whatever the end result, the process inappropriately slighted the autonomy of traditional groups? The slighting, if it occurred at all, surely did not exceed the reach of Parliament's powers under the new Constitution. The Constitution explicitly makes customary law subject to change by Parliament. On the other hand, Parliament might have chosen to accord the customary groups and their leaders more deference than it did, in recognition of the fact that the Constitution also explicitly recognizes the "status and role of traditional leadership," directs courts to apply "customary law," and proclaims the freedom of individuals to participate in the cultural lives of their choice. A reasonable reader of these sections might infer that the drafters had something more in mind than simply preserving old forms while draining them of content.

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What if Parliament had adopted a recognition act that actually recognized customary rules in their totality and left it up to the groups themselves to make changes from within over time? And what if the customary courts, not the government courts, had been entrusted with the initial responsibility of protecting married women from "unjust discrimination" under the Constitution?[35] Might this approach have produced over time an egalitarian version of marriage consistent with the new constitutional regime but more consistent with the honoring of traditional groups and practices? I am not at all certain that it would have, but here are some reasons for having given it a try.

Thandabuntu Nhlapo, a member of the South African Law Commission who served as the liaison between the commission and Parliament on customary marriage legislation, wrote an article a few years before the act's passage that suggests a basis for concern about the approach his own commission and Parliament took. In the article, he strongly criticizes the operation of the existing customary rules as they applied to women, but worries that "total abandonment of these [traditional] values may pose an even greater threat to social cohesion by creating a cultural vacuum in circumstances in which there are no ready substitutes."[36] He worries about treating women as independent when they are not yet independent in fact. Consider as a single example the widow who asserts her newly created property rights on the death of her husband but who, in doing so, offends the husband's family. She may gain a short-term benefit from the community property at the price of a long-term loss of the links to the husband's clan.[37]

Yet another ground for leaning toward reform from within is provided by Justice Albie Sachs of South Africa's new Constitutional Court, a person who has written and thought a great deal about customary law.[38] Sachs gave a speech in which he expressed confidence in the capacity of customary law to evolve to address new social problems. He spoke of what he considered the core notions of customary law that deserve to survive:

> The deep principles of social respect, coupled with the all-embracing processes involving listening and hearing . . . of reintegration of defaulters and delinquents into the community, of attempting always to restore equilibrium . . . At the heart of traditional Afri-

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> can legal concern is a sense of human solidarity, of regard for all. No one is cast out or left by the wayside.[39]

He believed that many surviving customary rules, "formalized and frozen by magistrates, missionaries, and patriarchal male elders in the colonial and apartheid era," were unfit for the current circumstances of African women and particularly African widows, but called not for substantive remedial legislation but for a revitalization of customary law that would return it to its roots. "It is important," he said, "that democracy not be regarded as a blunt instrument that clubs customary law on the head." He reported on his observations during eleven years of exile in Mozambique. (He was an ANC partisan whose arm was mangled by a bomb planted by the South African police in an assassination attempt.) There, he recalled, a newly democratic government valiantly created "community courts" made up of "people of standing" in the locality. The judges sat in panels of three or more, at least one of whom was a woman. The panels dealt with family issues with informed wisdom, reaching "fair and practical" results. Sachs did not recommend exactly the same approach for South Africa, but sought the help of his audience in designing new institutional arrangements with comparable promise.

If Sachs's ideas had been at the heart of the legislation, the traditional leaders in South Africa might have been nudged to include women in decision-making and to respond in new ways to women's and children's needs for new forms of economic protection in an era in which men are not always nearby to provide support. They might have learned that new rules are needed to make certain that women and children are not "cast out or left by the wayside." Barbara Oomen, a Dutch anthropologist who has been studying rural black life in the village of Hoepakranz in the Northern Province over the last few years, recently related the story of Rosa Diphofa, a single mother who wanted a plot of land of her own to build a home.[40] She "had read in the papers" that women were now entitled to land on the same basis as men. Though she was unable to speak for herself at the chief's court, an uncle spoke there on her behalf. The chief, Rosa reported, was "most surprised" by her claim

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but, after a "big discussion" with his advisors about the new rights, granted her request. Rosa was proud of her achievement:

> His decision went through the village like a bushfire. . . . The women, especially the single ones, were very happy for me and helped me with the money from the Credit Club—1100 rands—to buy corrugated iron sheets. . . . They have helped me with the construction. People were very surprised that I knew how to build a mud wall but I just sat down, thought about it, and started. All the time I felt this strength. Now there are other women who will also ask for land.

Even without an altered perception of women's entitlements, the chiefs might have had a pragmatic incentive to foster change in order to encourage women to choose to marry under customary rules at a time when rural women are gradually becoming able to exercise other choices. In urban areas, customary practices have already begun to change. A recent empirical study of black Africans living in urban townships near Pretoria found that today at the dissolution of a marriage, *lobolo* is rarely returned to the husband even when the woman is "at fault," and children typically remain with their mothers.[41]

As an American outsider, I find an intuitive appeal in leaving to each customary group the task of negotiating change internally. The old rules protect the status of men, but men were expected to bear significant responsibilities for their families—their wives, their children, and their brothers' children. Might not internally generated changes to provide for women and children have commanded more respect and adherence from those to whom they apply and left the rural women who pressed for them with more real power in their communities? Moreover, might not the changes that occur reflect more understanding of local needs than bureaucratic courts applying uniform rules of community property? In some ways the claims for leaving changes up to the groups themselves are little different from the traditional arguments that are made in the United States for leaving family law rules up to the states rather than the federal government—the arguments for government closer to the governed.

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Having said all this, I admit that I thoroughly distrust my intuitions. I have a typical liberal American's preference for protecting diversity without an adequate appreciation of the circumstances of the people who are stuck with living these diverse lives.[42] My version of change may well be romantic and implausible. The Recognition of Customary Marriages Act probably rests on a realistic assessment by the ANC that the men who are customary leaders are simply unlikely to be willing to share power with women or to transform and revitalize customary rules in the ways that Sachs expects. Few chiefs will respond like the chief in Hoepakranz. Moreover, internal reform would inevitably stretch over many years. A virtue of the act as adopted is that it gives property rights and other protections to women who marry now and who, especially in the rural areas, cannot realistically demand to marry under civil law. These women have been subordinated by whites and by black men for many centuries and have waited too long for equality before the law.

Of course, whether these rights that are due to them "now" under the act will actually accrue to the women for whom they are intended is a different question. The experience in America suggests that statutory reform in family law rarely produces much immediate change in behavior within people's homes. That experience is particularly likely to be repeated in South Africa where Parliament, which has passed much forward-looking legislation in the last few years, has often been unable, in a faltering economy, to provide the financial resources and infrastructure necessary to make new programs come to life.[43] The Recognition of Customary Marriages Act was adopted over a year ago. It has not yet been implemented. No registration system is in place. Family courts have not yet begun to hear divorces in cases of customary marriages. Indeed, in many rural areas, no accessible family courts exist.

When I asked people who had been involved in the legislative process whether they thought men and women would comply with the legislation, I got varying responses. Several thought that most couples would fail to register their marriages (and, indeed, the act itself, recognizing this probability, provides that failure to register shall not affect the validity of a customary

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marriage). Only one person to whom I spoke believed there was any likelihood that the sorts of men who currently enter polygynous marriages would comply with the requirement of coming to court for approval before taking a second wife. And few thought that most women or men married under customary law would, upon breaking up, petition a court for a divorce, even if there were a court nearby. For most black Africans in rural areas, it is possible that, for the near future at least, life will go on pretty much as it has. Changes in practices will occur over time not because of a statute, not because of courts, but because of the pressures of the market economy and the images of an outside world that rural people increasingly see. If this is so, the customary groups may obtain the opportunity that Parliament thought it had rejected of reforming the old practices from within.

ENDNOTES

[1]See John Comaroff and Simon Roberts, *Rules and Processes: The Cultural Logic of Dispute in an African Context* (Chicago: University of Chicago Press, 1981); Anthony Costa, "The Myth of Customary Law," *South Africa Journal of Human Rights* 4 (1998): 525.

[2]The Matrimonial Property Act of 1984. For a summary of the treatment of women under civil law, see Felicity Kaganas and Christina Murray, "Law and Women's Rights in South Africa: An Overview," in Murray, ed., *Gender and the New South African Legal Order* (Kenwyn: Juta, 1994), 15–16.

[3]The description of customary rules that follows is drawn from Thomas W. Bennett, *Application of Customary Law in Southern Africa* (Cape Town: Juta & Co., 1985), 137–182; Bennett, *Human Rights and African Customary Law* (Cape Town: Juta & Co., 1995); South African Law Commission, *Harmonisation of the Common Law and the Indigenous Law: Customary Marriages* (Pretoria: The Commission, 1997); Harold Jack Simons, *African Women: Their Legal Status in South Africa* (Evanston, Ill.: Northwestern University Press, 1968), 68–183.

[4]Thus, for example, a person in a customary union could invalidate the union by entering into a civil marriage with someone else, but not vice versa. Bennett, *Application of Customary Law in Southern Africa,* 172–182.

[5]See again the sources cited in note 3.

[6]Iain Currie, "The Future of Customary Law: Lessons from the Lobolo Debate," *Acta Juridica* (1994): 146; M. W. Prinsloo, G. J. van Niekerk, and L. P. Vorster, "Perceptions of the Law Regarding, and Attitudes Towards, Lobolo in Mamelodi and Atteridgeville," *De Jure* 31 (1) (1998): 86–89.

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[7]Many fine books exist that describe the lives of South African rural women. See, e.g., Rebecca Hourwich Reyher, *Zulu Woman: The Life Story of Christina Sibiya* (New York: Columbia University Press, 1948); Mark Mathabane, *African Women: Three Generations* (New York: HarperCollins, 1994); Patricia Romero, "The Autobiography of Nongenile Masithathu Zenani," in Romero, ed, *Life Histories of African Women* (London: Ashfield Press, 1988), 7–47; Romero, *Profiles in Diversity: Women in the New South Africa* (East Lansing: Michigan State University Press, 1998); and Belinda Bozzoli, *Women of Phokeng: Consciousness, Life Strategy, and Migrancy in South Africa, 1900–1983* (Portsmouth, N.H.: Heinemann Educational Books, 1991). Extremely interesting work has been conducted recently in three villages in South Africa's Northern Province by Dutch anthropologist Barbara Oomen. Preliminary reports of the work are available at <http://ict-law.leidenuniv.nl/group/JFVVI/www/oomen.htm>.

[8]Reyher, *Zulu Woman: The Life Story of Christina Sibiya.*

[9]Simons, *African Women: Their Legal Status in South Africa,* 15, 64.

[10]Kaganis and Murray, "Law and Women's Rights in South Africa: An Overview."

[11]See Isaac Schapera, *A Handbook of Tswana Law and Custom,* 2d ed. (London: Oxford University Press, 1955); Comaroff and Roberts, *Rules and Processes: The Cultural Logic of Dispute in an African Context*; Simons, *African Women: Their Legal Status in South Africa*; Bennett, *Application of Customary Law in Southern Africa.*

[12]Britain's practice of openly recognizing and enforcing customary rule began in Natal in the 1840s. Simons, *African Women: Their Legal Status in South Africa,* 19–26.

[13]Ibid., 28.

[14]K. L. Robinson, "The Minority and Subordinate Status of African Women under Customary Law," *South Africa Journal of Human Rights* 11 (1995): 457, 460.

[15]Royal Instruction of 8 March 1848.

[16]The Black Administration Act of 1927, sec. 11(1).

[17]See *Suid-Africaanse Nasionale Trust en Assuransie Maatskappy Bpk* v. *Fondo,* 1960 (2) SA 467 (A).

[18]See Gustive O. Larson, *The "Americanization" of Utah for Statehood* (San Marino, Calif.: Huntington Library, 1971), 99–100, 181–183, 213–216; Martha Sonntag Bradley, *Kidnapped From That Land: The Government Raids on the Short Creek Polygamists* (Salt Lake City: University of Utah Press, 1993); see also *In re Black*, 283 P2d 887 (Utah 1955).

[19]See Christina Murray and Catherine O'Regan, "Putting Women into the Constitution," in Susan Bazilli, ed., *Putting Women on the Agenda* (Johannesburg: Ravan Press, 1991), 33, 36–41; Catherine Albertyn, "Women in the Transition to Democracy in South Africa," in Murray, ed., *Gender and the New South African Legal Order,* 39. Women's groups pre-

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sented to the Constitution's negotiators a Women's Charter for Effective Equality. See Penelope E. Andrews, "Striking the Rock: Confronting Gender Equality in South Africa," *Michigan Journal of Race and Law* 3 (2) (Spring 1997): 307, 324.

[20]Constitution for the Republic of South Africa (1996), sections 9(1), 9(3).

[21]Iain Currie, "Indigenous Law," chap. 36 in Matthew Chaskalson et al., *Constitutional Law of South Africa* (Kenwyn, South Africa: Juta & Co., 1996), 36–3.

[22]Speech by Nozi Routledge-Madlala at a symposium on Customary Law and Gender, Johannesburg, 3 November 1997. Ms. Routledge-Madlala was a member of Parliament and chair of the ANC Women's Caucus. See also S. Hassim, "Family, Motherhood, and Zulu Nationalism: The Politics of the Inkatha Women's Brigade," *Feminist Review* 43 (1993): 1.

[23]Constitution for the Republic of South Africa (1996), section 6(1).

[24]Ibid., sections 30 and 211(2), respectively.

[25]Ibid., section 211(1).

[26]The Constitutional Court has decided no cases challenging the constitutionality of customary rules. The one significant lower court decision in which a challenge was made to customary family laws held that the customary rule that permits only men to inherit was "discriminatory," but it was not "unfair" to a widow because the inheriting male had an obligation to provide for the widow. See *Mtembu* v. *Letsala,* 1997 (2) SA 936.

[27]In the context of sex discrimination, see the opinions in *President of the Republic of South Africa* v. *Hugo,* 1997 (6) BCLR 708 (opinions of Justices Goldstone, Kriegler, Mokgoro, and O'Regan).

[28]Constitution for the Republic of South Africa (1996), section 36.

[29]See Murray and O'Regan, "Putting Women into the Constitution," 39, 40.

[30]South African Law Commission, *Harmonisation of the Common Law and the Indigenous Law: Customary Marriages.*

[31]Simons, *African Women: Their Status under the Law of South Africa*, 84 (speaking of polygyny). As for *lobolo,* he wrote: "But no change will be effective, nor should any be attempted, without the support of African opinion and that will be obtained only when Africans are able to manage their own affairs." Ibid., 96.

[32]This is the position taken eloquently by Victoria Bronstein in "Reconceptualizing the Customary Law Debate in South Africa," *South Africa Journal of Human Rights* (3) (1998): 388, 402–405.

[33]E.g., Romero, "The Autobiography of Nongenile Masithathu Zenani."

[34]Patikile Holomisa, speech to the Northern Province Council of Churches, 23 May 1997.

[35]This approach, if taken, would have been much like that taken in the United States in a somewhat different context: the application of the U.S.

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Constitution's Bill of Rights on Indian reservations. A federal statute creates a bill of rights for reservation Indians, but, as interpreted by the U.S. Supreme Court, leaves the enforcement of these rights up to the tribal courts. *Martinez* v. *Santa Clara Pueblo,* 436 US 49 (1978).

[36]Thandabuntu Nhlapo, "Women's Rights and the Family in Traditional and Customary Law," in Bazilli, ed., *Putting Women on the Agenda,* 111, 116.

[37]This example comes from a conversation with Likhapa Mbhata, a senior researcher with the Gender Project at the Centre for Applied Legal Studies, Johannesburg, October 1999.

[38]See, e.g., G. Welsh, F. Dagnino, and A. Sachs, "Transforming Family Law: New Directions in Mozambique," in Alice Armstrong, ed., *Women and Law in Southern Africa* (Harare, Zimbabwe: Zimbabwe Publishing House, 1987).

[39]Address to the Southern African Society of Legal Historians, 13 January 1999, at 12.

[40]Barbara Oomen, "'We Want to Secure Our Hope': Women and Land Rights in South Africa," in Madeleine Maurick and Bram Posthumus, eds., *Women Challenging Society: Stories of Women's Empowerment in Southern Africa* (Amsterdam: Netherlands Institute for Southern Africa, 1999).

[41]See Prinsloo et al, "Perceptions of the Law Regarding, and Attitudes Towards, Lobolo in Mamelodi and Atteridgeville."

[42]For example, I admire Michael Walzer, *On Toleration* (New Haven: Yale University Press, 1997).

[43]E.g., the government has had difficulty implementing new legislation regarding land redistribution and compensation for those who were the victims of crimes of the white government during apartheid.

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Martha Minow

About Women, About Culture: About Them, About Us

WHY DO SO MANY public and scholarly discussions of cultural conflict and cultural defenses focus on women? Consider the intense debates over how much a particular industrialized society should accommodate minority members who participate in cultural practices at odds with the majority. The common examples are female genital cutting, capturing young women to force compliance with arranged marriages, cultural defenses after the murder of a wife or daughter, traditional membership and property rules that disadvantage women, and the veil or scarf worn under religious compulsion by females.[1] These are also the frequent examples in debates over whether international human-rights law affords universal rights or imposes Western practices.[2] The concerns certainly extend to female children, and sometimes to all children, but the examples that recur involve the bodies and social roles of women and girls. I will return, at the end, to argue that the central focus should in fact be children; why would women instead seem so central?

I will leave for others to debate whether, as a matter of fact rather than a feature of public debate, risks to women figure in most or even a disproportionate number of clashes between democratic states' law and minority cultural practices, or human-rights norms and traditional societies. It is important to note the inextricable connection between "women's issues" and men's behavior—as polygamous husbands, the ones who de-

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mand genital cutting, or the ones whose conduct shames their wives.[3] But it is as "women's issues" that cultural clashes predominately arise in the minds of academics, reporters, and advocates. I ask here why this may be so, how it influences what are by now predictable moves in the debates, and what we may learn from reflecting this way on the debates rather than simply engaging in them.

WHY WOMEN?

Recent patterns of globalization and industrialization expose to view practices that used to be less visible because they were local and private. Globalized news media, hungry to fill their twenty-four-hour formats, scour places previously remote from urban and Western eyes. Migration patterns bring into contact people with "foreign" or "traditional" cultures and ordinary Westerners surprised or disturbed by what they see as different. Why do women—their own activities and how men treat them—surface so often in the resulting coverage and debates?

One reason may be that men seem more ready, at least superficially, to assimilate to globalized work structures and practices. In something as simple as clothing, men are more likely to converge in Western-style suits, or pants and shirts, while women's garb is much more varied, and women from other societies hang onto their traditional clothing much longer. This observation may simply restate the question: why do men more readily assimilate (at least superficially) than women?

The answer could lie in gender roles and gender divisions in the home societies of immigrants or in the receiving culture of the host nation. Cultural practices separating men and women, assigning women to a private sphere and men to a public sphere, can be carried over even as people migrate to a society with little or no resistance to including women in the public sphere and workforce. If only the immigrant men participate in the work world and public settings, they would face pressures and expectations for assimilation in the city or nation to which they migrate not confronted—at least not to such an extent—by women. If women stay at home or in some other sense are

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expected to preserve the distinction between home and work, between private and public, their bodies mark the distinction—by the clothing and markings they use, even by their very location. They may continue to dress according to their home tradition even if they do join the workforce or shop in public places.[4] Or subtle distinctions between home and work, private and public may greet the arriving immigrants and sort the women into the role of preserving traditions and the men into the role of assimilating.

Yet perhaps what really is at work is a convergence in the hierarchies of power across social groups, within and between societies, that preserves control over power among men and the relative subordination of women. Immigrants' home countries and receiving nations may both arrange relatively greater power for men and greater restrictions upon women—however different in form and degree. In this congruence, women's status and bodies become the focus for expressions of control and demarcation.

Earlier waves of industrialization—during the nineteenth and early-to-mid-twentieth centuries—often led men to migrate to new places ahead of women and children. Established in the new setting before the others—and cut free from the domestic sphere where traditions are preserved and reinforced—men often seemed, at least in public iconography, to assimilate sooner.[5] Participating in workplaces, labor activities, and public recreation and social scenes, men then and now would have more occasions to mix with diverse others, to see dominant customs at close hand, and to try them on. In an increasingly globalized economy, even residents of Third World nations who do not migrate can now experience some of these patterns as multinational industries move to their locales, offering work and more Westernized practices for men. In South Africa under apartheid, only men could move to urban areas under a policy that kept women and children in rural reserves—ostensibly to maintain culture but in effect to disrupt families.[6] In addition, widespread practices of home-based piecework involve women in paid labor within the private sphere of the home with reduced chances to encounter external influences as well as constrained employment rights.

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Yet this entire set of reveries would easily be disturbed by evidence of high levels of women's workplace participation, especially among immigrant women and women still living in their Third World homes. Unless their workplaces were remarkably and distinctively segregating (which actually is not implausible), such that women from a given group would not encounter people with other practices or customs, these immigrant women would have similar reasons to encounter and try out dominant customs or to assimilate to them. Women in these cases would have no more occasion for cultural conflict and clash than men. Yet scholarly and public discussions concentrate more on women than men in discussions of cultural conflict—even when it is men's behavior that underlies women's troubles.

Perhaps a better explanation for the salience of women in media, political, and scholarly discussions of cultural accommodation and human rights is simply the fascination of the exotic and the erotic, associated with the sexual, the private, the home—and the female. To answer what makes these fascinating is to dig deeper than I can for now. But there does indeed seem to be something compelling, arresting, even captivating about stories of women murdered for male or family honor, or about the cutting of female genitals. Such stories simultaneously horrify and entice. They illuminate "otherness" but also, perhaps, echo something familiar, in reality or metaphor, in the practices of the dominant Western nations.

For however horrifying or disturbing they may be, these stories gain attention not only for the same reason humans rubberneck at a violent accident or a genetic anomaly. That a judge would take seriously a "cultural defense" to the murder of a woman in the name of male honor in a society where such defenses are otherwise not allowed suggests some resonance, some degree to which the defense is not entirely alien or incomprehensible. That lawmakers agonize over protecting women and girls from genital cutting is to indicate some basic recognition or re-reading of such practices in light of gender hierarchies only too familiar in their own world.

Alternatively, women become the focus for cultural clashes because the Western liberal narrative is correct: civil and politi-

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cal rights have liberated women in the industrialized West but this progress has not yet been achieved elsewhere. Any calls to accommodate traditional cultural practices or to exempt groups from universal human-rights norms should, in this light, be understood as defenses against progress and barriers to women's liberation from antiquated confinement. Evidence of the special jeopardy to and burdens on females in many societies is ample.[7] The struggle for gender equality is embraced by many women within traditional cultures and societies. Nonetheless, this narrative of liberal progress is itself food for debate in arguments over cultural clash and accommodation.

WHAT ARE THE PREDICTABLE MOVES?

Just as women are salient in debates over cultural accommodation, certain sets of arguments and counterarguments predictably appear. We could even describe them as "moves" in a game. For ease of description, I will describe the game as a contest over liberal universal rights versus cultural autonomy and accommodation for minority or traditional practices—and label the "players" as the "liberal" and the "cultural defender."[8] One handy source is Susan Okin's essay "Is Multiculturalism Bad for Women?" collected with a variety of responding essays first in the *Boston Review* and, with additional responses, by Princeton University Press.[9] Another is Martha Nussbaum's *Sex and Social Justice*.[10]

On the one side, the liberals (notably, Okin and Nussbaum) argue that granting rights to protect minority or traditional cultural practices jeopardizes the struggle for gender equality and universal human dignity because minority and traditional cultures so often engage in domination of women. Exempting minority cultural groups within a place like the United States from otherwise prevailing liberal norms risks empowering only the most powerful within those groups who perpetuate practices denying dignity and autonomy to others—typically women—in their own group.[11] Katha Pollitt goes further to suggest that a kind of condescension or guilt about the Third World could be the only explanation for accepting cultural defenses for its residents or emigrants: Americans would never accept a cul-

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tural defense by an Italian or a Russian who hurts or kills his wife.[12]

Culture defenders, in response, answer that Western liberals wrongly criticize other cultures for gender oppression and other injustices while neglecting the form such oppression takes in their own culture.[13] Azizah Y. Al-Hibri puts it as a question: "Why is it oppressive to wear a head scarf but liberating to wear a miniskirt?"[14] Culture defenders also warn of the costs of a Western emphasis on individualism and the subordination of relationships and collective life.[15] The assertion and application of liberal norms jeopardize something of value: the autonomy and continuity of groups and cultural practices that aid human flourishing.[16] As Abdullahi An-Na'im notes, if theorists "encourage young women to repudiate the integrity and cohesion of their own minority culture, how can the theorists then help to sustain the identity and human dignity of these women?"[17]

Liberals argue in return that women, when given a chance, choose liberal rights and the alternatives to traditions that these rights represent.[18] Indeed, they often suggest that everyone would agree with liberal values and reject traditional cultural practices if given the chance. Culture defenders respond that the horror stories cited by liberals often violate the actual rules and norms of the cultural community; thus forced marriages among Pakistani immigrants offend not only their Western hosts but also violate state and religious laws in Pakistan.[19] Yes, "culture" is too often used to excuse cruelty and violence; but before condemning the culture, people with concern should interrogate the claim that "my culture made me do it."[20]

More basically, however, culture defenders challenge privileging the individual as the proper and sole unit of analysis, and individual choice as the ultimate good. (In a particularly deft effort to embrace individual rights and embedded social life, Martha Nussbaum suggests that when offered effectively, universalist values also afford women solidarity and affiliation—often with other women.[21])

Culture defenders also suggest that what is seen as choice in any setting may be better understood as a reflection of socialization.[22] Preferences, desires, and therefore choices are formed—or deformed—within social experience; they are not simply instinctive or internal to an individual. Culture defenders em-

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phasize that, as a result, what liberals view as free choices are themselves framed by social experiences and pressures. So a Muslim woman who claims that she wants to wear the *hijab* (veil) is no more misguided or impaired in her choice-making than a woman who wants breast-augmentation plastic surgery; to the culture defender, both can be viewed as capitulating to social norms and pressures, or as expressing and negotiating their own desires within the inevitable specificity of their own cultural environment.

A liberal may reply that being socialized into a world that values individual choice makes the identification and expression of choices different from when socialization lacks this commitment, for one socialized to value choice is likely to be more alert to interferences with it.[23] Or the liberal may insist that social practices and structures that deform choice must be changed—especially practices and laws "concerning marital rape, domestic violence, and women's legal rights over children," and structures assigning women to second-class status and daily fears.[24]

Dueling accusations of false consciousness can escalate with no end. Indeed, there is a risk of infinite regression here. You say that women in my culture have false consciousness, but you say this because of your own false consciousness—or I think this because of my own false consciousness, and so forth. These kinds of exchanges are essentially incorrigible. No facts of the matter can prove or disprove false consciousness without a prior agreement about what one ought to want.

Moreover, to anyone committed to the advancement of women, questioning a woman's ability to make choices is itself a disturbing reminder of the rationales for denying women choices. Those rationales, historically, pointed to women's vulnerabilities, lack of education, inadequate rationality, overweening emotionality, or other impairments. To question the choices of women who wear scarves, defend and engage in genital cutting, or undergo arranged or polygamous marriages is to echo those arguments for denying women any self-determination. Demonstrating how women—or any oppressed groups—adapt to curtailed choices can demolish claims of inherent inferiority or impairment, but even this risks reinforcing images of their vulnerability.[25]

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However problematic, the exchanges over false consciousness and choice produce intriguing twists. The liberal can claim that internal hierarchies prevent women from exercising control over the shape of "traditional" practices. Culture defenders counter that liberal interventions neglect larger colonial and anticolonial struggles or other ongoing intergroup conflicts. In these contexts, immigrant and minority group women may well rather align with the men in their group than be "rescued" by outsiders.[26]

In a very different context, one observer comments that the Hindu Right in India, using the language of secularism and civil law, "has attempted to position itself as the guardians of the rights of women from minority religious communities as part of its more general project of undermining the very legitimacy of these communities."[27] Liberals who oppose cultural defenses may not have such an explicit project, but to members of minority cultural groups or Third World cultures resisting universal human rights it may seem as though they do. Especially when immigrants embrace a traditional cultural practice as a form of resistance to oppression by the dominant culture, the dominant group's challenges to that culture can seem like an extension of that oppression.[28] The Western liberal speaks with authority and confidence in the name of universally applicable principles and against special exemptions. Many on the other side ask why it is they show so little humility, give so little acknowledgment of the contingency of each person's claim of truth, and manifest so little respect for the resources internal to each culture to rectify its own oppressions.[29]

In fact, both liberals and culture defenders recognize the multiplicity and diversity within any group—and the shifts in group practices and beliefs over time. Yet rather than a point of commonality, this recognition generates grist for each side's arguments. For the liberals, the presence of different subgroups and viewpoints within a culture provides yet another reason to ensure individual choice rather than confine any individual to one set of cultural practices.[30] For culture defenders, such mutability and variety within any culture give reason for humility. They infer that divergence within the group and shifts over time caution against any claims about what everyone wants or needs.[31] Outsiders therefore should refrain from imposing indi-

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vidual rights as the only method for internal group change. Finding the play in the joints in even the most coherent cultural world should generate greater respect for the individuals who can and do wend their own ways through complex cultural worlds. Indeed, to the extent that minority group practices are themselves oppressive, culture defenders maintain that group members can and do engage in their own internal group struggles, which allow them to preserve their group while redressing the offensive group practices.[32]

The liberal reacts: but then the mutability of cultures should remind us never to use law to freeze (with minority rights or exemptions from universal human rights) cultural practices that otherwise could change, under pressure or natural evolution.[33] Granting any kinds of group-based protections may even strengthen dying practices that are revived as gestures against external powers or last-ditch efforts by internally powerful figures to hang onto their positions.[34] The fate of an inevitably shifting set of practices should be left to group members—but only if those members each have rights to participate fully in such self-determination.[35]

Yet, the culture defender responds, this very mutability should remind us that Western liberal rights grew from and in response to particular circumstances, so it is not at all clear that the familiar political and civil liberties are suited to checking oppression in very alien settings.[36] Moreover, the fluidity and contestation within cultures count against outsiders who attribute an objectionable practice to the entire culture and who wrongly trust external interference more than internal processes of dissent and reform.[37]

Perhaps a mediating voice replies: the mutability of culture should encourage us to reform the oppressive qualities of our own—and to preserve the chance for others to reform the oppressive qualities of theirs, rather than to condemn them wholesale.[38] Yet the liberal claims that the particular culture in which women find themselves is an accident. Unless women have genuine and attractive options, they cannot be understood as choosing the norms or choosing to endorse the norms of the culture in which they find themselves.[39]

A chart can summarize the debate. I add in brackets a few further rejoinders beyond ones I have found.

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Liberal	Culture Defender
Cultural defenses hurt women	Liberals neglect gender domination in their societies
Cultural defenses only help those already in power	Cultural defenses preserve settings for human flourishing
Cultural defenses reflect condescension or guilt about the Third World	Liberal rights risk abandoning girls while the liberal theorists offer nothing to sustain their identity and dignity in return
"Traditional" women, when given a choice, like what liberalism offers and 1) Women can find community even as they explore and seize liberal rights 2) [Having socialization into a world of individual choice itself is different than having socialization without it;] The upshot of recognizing the social dimension of desire should not be to abandon the priority of individual choice but to enable reforms of moral education and laws and institutions constraining women	Horror stories violate indigenous norms too; but "choice" is problematic because 1) it is too individualistic and neglects the group in which meanings are made; Why should the individual, and individual choice, be paramount when it undermines or undervalues the group 2) everyone is more effectively socialized into group values than individually capable of choice
Internal group hierarchies prevent women from shaping social practices so why should they be stuck with them?	Internal group hierarchies pale before hierarchies between Western and Third World nations, and between majorities within Western countries and their minority groups; minority group members understandably and rightly choose group solidarity against larger domination
Group practices and beliefs change so law should not be used to freeze minority practices or exempt them from universal human rights	Group practices and beliefs change so outsiders should refrain from using individual rights to alter traditional groups
[Contests can always occur within a culture about what are its practices so it is wrong to use law (through cultural defenses or exemptions from human rights) to prefer one version over others in any way that interferes with individual rights]	[Contests can always occur within a culture about what are its practices so it is wrong to use law to arm some—through individual rights—against others]

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[Western rights evolved over time so it is no insult to point out how needed they are elsewhere]	Western rights evolved over time in specific circumstances so there is no reason to think that their current particular form is well-suited to respond to oppressions in quite alien societies and cultures; the mutability of culture should remind Western/dominant groups to reform their own—and leave reform of other cultures to their members
Women don't choose their culture nor necessarily endorse its norms unless they have genuine choices, meaning attractive alternatives and the capacity to choose among them	[This once again elevates the individual, and individual choice, over all other goods including the texture of a culture and the interdependence of a group] [Also: real concerns about enhancing women's capacities for choice would support internal reform movements and also address the material and social contexts in which women live rather than superimpose individual rights on allegedly constraining cultural practices]

THE UNDERLYING PREOCCUPATION WITH CHOICE AND PREFERENCE

The debates circle around and around a preoccupation with choices and preferences. Who can know his or her own wants—and under what conditions? Who can speak for anyone about his or her desires? The academic debate is usually just that, a debate among academics, for even those who speak as culture defenders are themselves already very much members of the Western liberal academic tradition, whatever their culture of origin. They may call for listening to the voices of women genuinely immersed in groups whose practices come under challenge—but they then will clash over who best speaks for those who still cannot be heard.[40]

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Choice—and its complex determinants—surface in a more subtle way. Any journalist or scholar addressing culture clashes chooses what ought to be of concern for others; but why do they choose as they do? This question returns us to the opening query. Why the focus on women, in discussions about cultural clashes and accommodations? Those who emphasize concerns for women reflect their own priorities, stemming from their own experiences and cultural contexts.

If debaters consulted members of immigrant communities or residents in Third World countries—if even small groups of the women in these settings had been asked about their own priorities—would they pick the circumstances of women above all others? Would they pick the means of individual rights above all others? What if, instead, they were to pick as their priority economic equity for their entire group when compared with other groups?[41] Or, what if they focused on a women's issue, such as domestic violence, but preferred to draw on village tradition over liberal rights, so they would not have to leave or destroy their group in order to address the problem?[42] To assume that these kinds of choices would be mistaken—indeed, to bypass such choices and simply assert an outsider's preference—is to engage in the kind of imposition that the rhetoric of choice should render problematic. It will only seem unproblematic to those whose power is sufficiently great that they do not even see the coincidence between their interests and the way decisions are debated and made.

What an irony: precisely in the moment of claiming concern for others, we risk neglecting how our own self-interest and worldview frames what we claim on their behalf. This is reminiscent of voting-rights reforms in the United States, intended to enable the election of minority group members even in majority-dominated districts—but it operated so as to allow the white majority to select their preferred minority candidate, not the one the minority community's own majority reportedly favored.[43]

Choices and preferences are of course central to the liberal conception of liberalism, to individual rights, and to the struggle against inherited and assigned status and constraints. Three linked difficulties arise, though, when women and choice come

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together in debates over cultural clash and accommodation. The first is that the very effort to respect choice can stymie advocates for women's rights if they find women disagreeing with what the advocates think they should want. They have to find women and consult them, though, for this to happen. Besides logistical difficulties, the risk of discovering disagreement among women seems to be a powerful reason not to try.

The second is that ensuring the conditions under which women's preferences and choices would seem trustworthy will often entail changing their circumstances rather dramatically, so that women have genuinely attractive options, education, and safety. Undertaking economic development projects, promoting literacy and self-improvement for women, extending medical services, and subsidizing local reform efforts require enormous commitments of time and resources. Making such efforts work demands consistent efforts to earn trust. Working in this way—in Third World countries or in impoverished parts of developed nations—would show how arid it is to discuss "choice" remote from the conditions that enable it, even while revealing that no assistance can work unless the supposed beneficiaries choose for it to do so.

The third is that any meaningful efforts actually require altering the immediate contexts of socialization: the family, the school, and the community affecting children's development. Not only is this an enormous and challenging undertaking, it sits at the heart of what cultural groups understandably view as their most important mission: passing on their ways to the next generation.[44]

Honest consideration of the centrality of choice should make it clear that it is children, not women, who lie at the heart of questions of cultural clash and accommodation.[45] For children are the prime targets of socialization—and even in liberal societies, children are not viewed as yet capable of choice. Any genuine effort to enable choices must focus on children. Yet any such effort then collides forcibly at the heart of culture, at the center of immigrant communities, at the core of Third World societies, even at the most fundamental freedoms—to reproduce and raise children—ensured by law to individuals in Western, democratic societies. No comfort can be found by asserting

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that the children themselves would choose efforts that constrain or interfere with their parents' and communities' own child-rearing and socializing practices. Reconciling what it takes to equip children as discerning choosers with what it takes to respect parents and communities as child-rearers is as hard as any task gets.

CHILDREN, "THE PROBLEM THAT HAS NEVER BEEN SOLVED"[46]

Taking up questions of children, child-rearing, and socialization is especially difficult because Western liberals are perplexed about how to handle cultural disputes in this terrain even among themselves. Critical, high-profile disputes over state power and individual rights often stem from intergroup conflicts. The U.S. Supreme Court delineated parental rights over children's education after one state tried to prevent instruction in German due to anti-immigrant sentiment, and another tried to restrict Catholic education.[47] As even these cases suggest, children often become simply the pawns in conflicts among adults.[48]

No doubt this helps to explain why, in the United States, a patchwork quilt of rules and court decisions recognizes rights for children in some circumstances but not others. This pattern also reveals ongoing ambivalence about whether to empower the state to act for children or instead strengthen parental prerogatives. When children are threatened directly by the state, they are more likely to be recognized as rights-bearers; when the state disagrees with parental practices, the state may intervene or may instead acknowledge parents as primarily responsible for, and relatively empowered over, their children.

Thus, the U.S. Supreme Court has ruled that minors have rights to counsel, due process, and against self-incrimination when facing state juvenile justice or criminal charges.[49] A parent (or guardian) may not make a martyr of his child—and may not on religious grounds gain an exemption from otherwise justifiable child-labor restrictions.[50] But Amish parents won the power to keep their children out of high school, and the court did not even require consultation with the children.[51] Otherwise, the court acknowledged, members of the Amish commu-

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nity would not only face constraints on their religious freedoms; they would risk losing their way of life. Each state, under its own laws, requires children to obtain schooling. But each is constrained, under the Constitution, to permit parents to opt out of the common public schools and to satisfy this requirement in line with their own religious and personal commitments.[52] Parental autonomy, along with religious free exercise, is the chief instrument of cultural pluralism in this country. Any greater state incursions on parental control over children's education and development will be viewed as assaults on parental prerogatives and family privacy. Children thus remain under parental control except under limited circumstances, and then state supervision takes the form of protections even more than assurances of individual rights.[53]

I would be the first to acknowledge—indeed, I have argued extensively elsewhere—that it is relationships, not freedoms, that children need.[54] Children need environments where they can learn what is just, what it means to have their needs met, and what it means to have and to fulfill obligations to others. Sensibly, democratic legal systems expect parents and immediate communities to be the frontline providers for children while offering back-up and support, chiefly through educational opportunities and agencies charged to guard against child abuse and neglect. This acknowledges that nurture is a face-to-face task and that parents are the ones most likely (though not universally) able and motivated to do what is best for their children. It also establishes a framework of pluralism and avoids state standardization of children. And it privatizes most decisions about children. Primary responsibility and power to parents conceal from public view much that affects children, avoiding both public controversies and public responsibility about everything from what constitutes appropriate moral instruction to what for children are decent standards of living, medical services, and time with loving adults.

Here, then, is the problem for those who would address the place of children in cultural clashes. Moving children from private to public concern puts front and center debates over what is a good life, what values should guide children's development, and how much should children's needs be met by

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people other than their immediate family. Any answers involve more state control than we have had. What state control can be adopted, compatible with constitutional commitments to parental prerogatives and religious freedom, to equip children as choosers? What methods can be adopted, compatible with respecting all individuals, to address minority or immigrant cultural practices that trouble the majority?

Any special state protections for immigrant children against the practices of their parents risk charges of—if not actual—invidious discrimination, as well as occasions for heightened disputes about what are or should be viewed as unacceptable practices. State prohibition of female genital cutting leads, then, to the claim that male circumcision should equally be disallowed.[55] Once a marker of minority religions, later a widely accepted practice, male circumcision has now reemerged as a contested issue within Western societies. Should it then no longer be a parental prerogative? And if so, what special claims should be available for Jews and Muslims who still conscientiously believe in the practice?

Greater state involvement in the lives of families and children, most basically, exposes to view the deep debates over raising children that run throughout Western industrialized societies, well apart from conflicts over the practices of recent immigrants. State supervision of the child-disciplinary practices of immigrant parents would, if fairly done, also lead to supervision of the disciplinary practices of all parents. This would not only be enormously expensive and invasive; it would also expose to view the deep split in the nation over corporal punishment.[56] The division may even run inside of families, even inside the heads of parents; in a recent American poll 55 percent of parents believed that corporal punishment was "sometimes necessary," while 94 percent of those with children had spanked their children within the year.[57] If you think the fight over women's status is intense, wait until you see the fight over children. And with children, the option of trying to consult those most affected seems even less remote and reliable.

Perhaps, nonetheless, we can learn from the predictable moves in the debate over women and cultural accommodation. Perhaps we can acknowledge that all of our preferences are shaped,

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willy-nilly, by cultural practices and options, and can work to enhance those options with sufficient humility to respect each one. Along the way, we will have to acknowledge that debates over cultural conflict and assimilation are not just about women, and not just about immigrants, minority groups, or Third World nations; they are about all of us.

ENDNOTES

[1]See Susan Moller Okin with respondents, *Is Multiculturalism Bad for Women?* ed. Joshua Cohen, Matthew Howard, and Martha C. Nussbaum (Princeton, N.J.: Princeton University Press, 1999); Judith Resnik, "Dependent Sovereigns: Indian Tribes, States, and the Federal Courts," *University of Chicago Law Review* 56 (1989): 671; Ayelet Shachar, "On Citizenship and Multicultural Vulnerability," *Political Theory* 28 (2000): 64.

[2]See, e.g., Tracy E. Higgins, "Anti-Essentialism, Relativism, and Human Rights," *Harvard Women's Law Journal* 19 (1996): 89; Celina Romany, "Black Women and Gender in a New South Africa: Human Rights Law and the Intersection of Race and Gender," *Brookings Journal of International Law* 21 (1996): 857. There, additional concerns address whether international norms and institutions should extend into the domestic sphere—and whether failure to do so reflects gender bias in the very construction of international law. See Hilary Charlesworth, "Alienating Oscar? Feminist Analysis of International Law," in *Reconceiving Reality: Women and International Law,* ed. Dorinda G. Dallmeyer (Washington, D.C.: American Society of International Law, Studies in Transnational Legal Policy no. 25, 1993), 1, 9.

[3]See Gina Piccalo, "Attorneys to Cite Similar Incident in Drowning Case Defense; Courts: Saying Cultural Values Caused Woman to Try to Kill Her Children," *Los Angeles Times,* 17 February 2000, B11; "Legal Loophole Results in Forced Marriages in Britain," *The Hindu,* 6 August 1999.

[4]See John McCoy, "Muslim Says Mall Expelled Her Over Veil; Guards Misunderstood Rule on Hidden Faces, Official Says," *Dallas Morning News,* 12 May 1999, 27A.

[5]See, e.g., Joan Micklin Silver, director, *Hester Street* (1975 movie). African-American men also migrated without their families to wherever they could find jobs—but assimilation typically was not offered as an option for them. See Jacqueline Jones, *The Dispossessed: America's Underclasses from the Civil War to the Present* (New York: BasicBooks, 1992).

[6]See Mahmood Mamdani, *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism* (Princeton, N.J.: Princeton University Press, 1996).

[7]See, e.g., Michele Landsberg, "Human Rights Must Include Women's Right to Escape Abuse," *Toronto Star,* 12 September 1992 (reporting Amartya Sen's

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finding that one hundred million women are "missing" in Africa and Asia, killed by female infanticide, unequal food and medical care, forced childbearing, and domestic violence).

[8]Any such names are at risk of reflecting one rather than another side; perhaps these names seem to come from the liberal perspective and associate "culture" only with those who defend traditional cultures when one of their basic arguments is that every person has and reflects a culture. Yet "liberal," however pleasing the name may seem to its adherents, has the negative associations of imperial myopia when named by opposing circles. So consider the names crudely descriptive, from both perspectives.

[9]Okin, *Is Multiculturalism Bad for Women?*

[10]Martha C. Nussbaum, *Sex and Social Justice* (New York: Oxford University Press, 1999). See also Nussbaum, *Women and Human Development: The Capabilities Approach* (Cambridge: Cambridge University Press, 2000).

[11]Susan Moller Okin, "Reply," in *Is Multiculturalism Bad for Women?* 117, 121; Yael Tamir, "Siding With the Underdogs," in ibid., 47, 47–49, 52. See also Nussbaum, *Sex and Social Justice,* 36 (criticizing those who oppose universalism only to leave in place "religious taboos, the luxury of the pampered husband, educational deprivation, unequal health care, and premature death").

[12]Katha Pollitt, "Whose Culture?" in *Is Multiculturalism Bad for Women?* 27, 28.

[13]Bhikhu Parekh, "A Varied Moral World," in *Is Multiculturalism Bad for Women?* 69, 71; Bonnie Honig, "My Culture Made Me Do It," in ibid., 35, 38–39; Homi Bhaba, "Liberalism's Sacred Cow," in ibid., 79–80. See also Joseph Raz, "How Perfect Should One Be? And Whose Culture Is?" in ibid., 95, 97: "We do not reject our culture when we find it replete with oppression and the violation of rights; we try to reform it. We should not assume the right to reject or condemn wholesale the cultures of groups within ours in similar circumstances."

[14]Azizah Y. Al-Hibri, "Is Western Patriarchal Feminism Good for Third World/Minority Women?" in *Is Multiculturalism Bad for Women?* 41, 146. See also Sander Gilman, "'Barbaric' Rituals?" in ibid., 53, 53–58; Robert Post, "Between Norms and Choices," in ibid., 64, 67.

[15]Honig, "My Culture Made Me Do It," 35, 39.

[16]Parekh, "A Varied Moral World," 71.

[17]Abdullahi An-Na'im, "Promises We Should All Keep in Common Cause," in *Is Multiculturalism Bad for Women?* 59.

[18]Nussbaum, *Sex and Social Justice,* 29, 47–48, 53–54; See Okin, "Reply," 122 (quoting a Malaysian Muslim woman who asserted against culture defenders that "'No *woman* likes polygamy!'").

[19]David Bamber, "Asian Practice of Forced Marriage to be Outlawed," *Sunday Telegraph* (London), 18 June 2000, 13; Gavin Bel, "Indecent Proposal," *Scotsman*, 8 April 2000, 1.

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[20]Honig, "My Culture Made Me Do It," 36.

[21]Nussbaum, *Sex and Social Justice*, 49.

[22]Al-Hibri, "Is Western Patriarchal Feminism Good for Third World/Minority Women?" 45.

[23]This is my own suggestion.

[24]Nussbaum, *Sex and Social Justice*, 13, 151 (in this latter reference citing work of Amartya Sen on adaptive preferences).

[25]Again, Amartya Sen's work on adaptive preferences is instructive. See Amartya Sen, "Gender Inequality and Theories of Justice," in *Women, Culture, and Development: A Study of Human Capabilities,* ed. Martha Nussbaum and Jonathan Glover (Oxford: Clarendon Press, 1995).

[26]See Saskia Sassen, "Culture Beyond Gender," in *Is Multiculturalism Bad for Women?* 76–78; Homi K. Bhaba, "Liberalism's Sacred Cow," in ibid., 79, 83–84 (postcolonial struggles interweave liberal and anticolonial claims). Both Sassen and Bhaba would be better described as hybrid watchers than culture defenders; both argue that it is nearly impossible to separate cultural groups in terms of values, rights, and arguments given long-standing cross-cultural contact and hybridization.

[27]Ratna Kapur, "The Two Faces of Secularism and Women's Rights in India," in *Religious Fundamentalisms and the Human Rights of Women*, ed. Courtney W. Howland (New York: St. Martin's Press, 1999), 143, 148.

[28]See Sassen, "Culture Beyond Gender," 77.

[29]See Al-Hibri, "Is Western Patriarchal Feminism Good for Third World/Minority Women?" 46; Parekh, "A Varied Moral World," 74.

[30]Tamir, "Siding With the Underdogs," 52.

[31]See, e.g., Gilman, "'Barbaric' Rituals?" 53, 55.

[32]Bhabha, "Liberalism's Sacred Cow," 82–84; Martha C. Nussbaum, "A Plea for Difficulty," in *Is Multiculturalism Bad for Women?* 105, 108. See Raz, "How Perfect Should One Be?" 97–98: "So if we can think of taking steps to put an end to the existence of distinct cultural groups in our midst it is only because we are outsiders to these groups. Members can disown their group and try to assimilate to the majority group—and we should certainly enable them to do so. Or they can strive to change their group. But they cannot responsibly wish for its extinction. Outsiders can, and members can when they see themselves as outsiders. But, particularly horrendous groups excepted, we should not do so precisely because we are outsiders."

[33]Tamir, "Siding With the Underdogs," 51–52; Okin, "Reply," 118.

[34]Pollitt, "Whose Culture?" 29; Tamir, "Siding With the Underdogs," 49–51.

[35]Tamir, "Siding With the Underdogs," 50–51.

[36]Parekh, "Varied Moral World," 73–74; Post, "Between Norms and Choices," 68 (although not a culture defender, he makes this contextualist point).

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[37]Bhabha, "Liberalism's Sacred Cow," 82–84.

[38]Raz, "How Perfect Should One Be?" Another mediating position urges state intervention that both enables cultural diversity and empowers at-risk individuals within cultural groups that disempower them. See Ayelet Shachar, "On Citizenship and Multicultural Vulnerability" and "Group Identity and Women's Rights in Family Law: The Perils of Multicultural Accommodation," *Journal of Political Philosophy* 6 (3) (1998): 295–305.

[39]Nussbaum, "A Plea for Difficulty," 54.

[40]Compare Okin, "Reply," 122–123, with Al-Hibri, "Is Western Patriarchal Feminism Good for Third World/Minority Women?" 41, 42.

[41]Okin's critics point to poverty, caste, colonialism, and mistreatment of children as serious issues that compete with and also intersect with the treatment of women in the fight over priorities for reform. See Bhabha, "Liberalism's Sacred Cow," 81; Sassen, "Culture Beyond Gender," 77–78; Abdullahi An-Na'im, "Promises We Should all Keep in Common Cause," 59, 62; and Janet Halley, "Culture Constrains," in *Is Multiculturalism Bad for Women?* 100, 103–104.

[42]See Bharati Sadasivan, *Community Justice: West Bengal's Women Draw on Village Tradition to Stop Domestic Violence* (Ford Foundation Report, Winter 2000): 6–9.

[43]See Lani Guinier, *The Tyranny of the Majority: Fundamental Fairness in Representative Democracy* (New York: Free Press, 1994).

[44]Okin is quite explicit on this subject, couched in the specific context of religions: "Given that it is central to most religions that their members try to pass on their beliefs to their children, it would strike an intolerable blow at religion not to allow this to take place." Okin, "Reply," 130. She recommends that liberal states nonetheless expose all children to information about all religions and secular beliefs and thereby prevent any parent from preventing his or her children from learning enough about the existence and content of alternatives to be able to choose their beliefs for themselves. Okin, "Reply," 130–131.

[45]See Halley, "Culture Constrains," 100, 103: "cultural survival policies often focus not on women but on children. And this is no accident: raising a child in a culture—any culture—implants not only the child in the culture but the culture in the child." Halley argues that adult superordination over children is the locus of illiberalism, but that there will inevitably be some form of constraint in any acts of child-rearing. Halley, "Culture Constrains," 103–104.

[46]Justice Thurgood Marshall once asked me what I wanted to do after clerking for him; I told him work for children's rights. He replied, "that's the problem that's never been solved."

[47]*Meyer* v. *Nebraska*, 262 US 390 (1923); *Pierce* v. *Society of Sisters*, 268 US 510 (1925).

[48]For discussions of the historical contexts of such cases, see Martha Minow, "We the Family," *Journal of American History* 74 (3) (December 1987): 959–983.

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[49]See *In re Gault*, 387 US 1 (1967).

[50]*Prince* v. *Massachusetts*, 321 US 158 (1944).

[51]*Wisconsin* v. *Yoder*, 406 US 205 (1972).

[52]See *Pierce* v. *Society of Sisters*, 268 US 510, 534–35 (1925). However, even the parental right to opt out of public education has limits, "if it appears that parental decisions will jeopardize the health or safety of the child, or have a potential for significant social burdens." *Wisconsin* v. *Yoder*, 406 US 205, 234 (1972).

[53]See also *Parham* v. *J.R.*, 442 US 584 (1979) (parents may commit their children to state mental institutions subject to neutral review by the admitting physician).

[54]See, e.g., Martha Minow, *Making All the Difference: Inclusion, Exclusion, and American Law* (Ithaca, N.Y.: Cornell University Press, 1990), 267–311; Martha Minow, "Rights for the Next Generation: A Feminist Approach to Children's Rights," *Harvard Women's Law Journal* 9 (1986): 1; Martha Minow; "Children's Rights: Where We've Been, and Where We're Going," *Temple Law Review* 68 (1995): 1573.

[55]See, e.g., Ross Povenmire, "Do Parents Have the Legal Authority to Consent to the Surgical Amputation of Normal, Healthy Tissue from Their Infant Children?: The Practice of Circumcision in the United States," *American University Journal of Gender, Social Policy and the Law* 7 (1) (1999): 87 (criticizing inconsistency of federal law banning genital "mutilation" for females but not for males).

[56]Yvonne Yip, "The Case of a Father's Refusal to Spare the Rod," *Christian Science Monitor,* 15 September 1999, 1 (describing widely disparate practices and views of a state agency decision that a minister committed child abuse when he used a belt to smack his son).

[57]Idem. See also Dana Garavelli, "Smacking: Should We Be Cruel to be Kind?" *Scotsman,* 13 February 2000, 12 (reporting similar debate in Scotland); Michael Gardner, "No, Beating Children is Not 'Reasonable,'" *Times* (London), 23 June 1998 (reporting similar debate in England and Europe).

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We have a great deal of difficulty these days staying out of one another's way: witness British confoundment in the Rushdie affair, witness American court cases about child betrothal, animal sacrifice, municipal creches, or ritual clitorodectomy. Differences of belief, sometimes quite radical ones, are more and more often directly visible, directly encountered: ready-to-hand for suspicion, worry, repugnance, and dispute. Or, I suppose, for tolerance and reconciliation, even for attraction and conversion. Though that, right now, is not exactly common.

Clifford Geertz

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Austin Sarat

The Micropolitics of Identity/Difference: Recognition and Accommodation in Everyday Life

[P]rovidence has been pleased to give this one connected country to one united people—a people descended from the same ancestors, speaking the same language, professing the same religion, attached to the same principles of government, very similar in their manners and customs . . .

—John Jay[1]

We are not an assimilative, homogeneous society, but a facilitative, pluralistic one, in which we must be willing to abide by someone else's unfamiliar or even repellant practice because the same tolerant impulse protects our own idiosyncrasies.

—Justice William Brennan[2]

IN ITS ISSUE OF JANUARY 20, 1992, *People* magazine ran a story entitled "Die, My Daughter, Die!" which described the murder of Tina Isa, the sixteen-year-old daughter of Palestinian immigrants Zein and Maria Isa, who, with their seven children, came to the United States from the West Bank in 1985.[3] While the other Isa children consistently adhered to the strict, traditional values of their Palestinian parents, Tina quickly began to assimilate to the anything-but-traditional values of American adolescence. Tina and her brothers and sisters had

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all been forbidden to go on school trips, to go to concerts, to visit friends on weekends, or to date. However, unlike her siblings, she refused to abide by these prohibitions. Defying her parents, Tina took a job as a counter clerk at Wendy's fast-food restaurant and dated an African-American schoolmate. In so doing, she violated long-standing Arab understandings concerning appropriate behavior for young women and, in the eyes of her parents, brought shame and dishonor to the family name.

Opposite a half-page photo of her father in a bloodstained sweater, the *People* article detailed how Tina's father had hoped to arrange a marriage for her, as he had done for her three older sisters.[4] Zein wanted Tina to return to his native village and marry a relative of one of his sons-in-law. This required that she be a virgin.

Tina resented and resisted her father's plans concerning her marriage. As a result, they had frequent fights during which her father warned her about her offensive behavior and threatened to vindicate the family's damaged honor. On the night of Tina's death, Zein again accused her of shaming the family by virtue of her allegedly promiscuous behavior, and, while Maria, Tina's mother, held her down, he stabbed her to death. *People* quotes an anthropologist, himself born and raised in Jerusalem, who said that "the way Tina lived offended her father's sense of honor. . . . Everyone," he continued, "growing up [as Tina had] in the Middle East knows being killed is a possible consequence of dishonoring the family."[5]

Charged with first-degree murder, the Isas sought to raise the so-called cultural defense.[6] They claimed that they could not justifiably be found guilty since what they did to Tina would not have been treated as a crime in their homeland. This defense failed, as it generally does, and the Isas were each convicted of first-degree murder and sentenced to death.[7]

One response to the tragic story of Tina Isa's death is to worry about the "us/them" dynamic that stories like the *People* magazine portrait of the Isas conjure up. "We," the *People* article suggests, would never do the kind of thing that Zein and Maria did; "they" do such things. Another response is to use stories like Tina's to call into question the ways in which

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difference is given meaning in popular culture and, even more so, in the institutional practices of American law.

The story of Tina Isa provides a vivid image of the drama of cultural difference and of one of the dilemmas faced by a nation of many peoples. Cultural differences provide building blocks for, as well as barriers to, the achievement of a way of life that is recognizably American. The honor code invoked by Tina's parents is an example of the kind of meaningful cultural commitments frequently romanticized by those who seek to retrieve what they perceive to be the lost ideals of community and solidarity.

To be an American is to live with an ambivalent relationship to difference. It is to be a neighbor to difference and, at the same time, to harbor suspicions that difference may be our national undoing, that differences can never be bridged, and that without assimilation disorder lurks just below the surface of our national life.[8] Yet beyond the dramatic appeal of such an understanding and of cases as tragic as that of Tina Isa, difference is today an integral part of American culture; America is a hybrid nation. Difference has been a part of the cultural life of Americans since the nation's founding.[9]

To whatever extent the many races, ethnicities, and identities that compose America have or have not amalgamated, the fear that America would be a nation of many peoples who would not "amalgamate" has prompted a strong desire for sameness and community. This desire creates what Michael Kammen calls "a dialectic of pluralism and conformity." That dialectic, Kammen argues, lies "at the core of American life."[10] While embracing freedom and diversity, Americans value connection; we strive to remain individuals, but we also wish to be a people. This dialectic of pluralism and conformity lies at the core of what I shall call here the everyday life of identity/difference, especially as it is played out in the routine practices of communities and institutions.[11]

Tina Isa's death is only one type of identity/difference story. Tina's story is an example of what I have elsewhere called "disorderly difference"—difference that threatens the fragile harmony and stability of this nation of immigrants.[12] Disorderly

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differences, like the familial honor code that prompted Tina's murder, forcefully raise the question of when and how differences can (and should) be recognized and accommodated.[13] They require us to ask whether we can (or should) justify, or excuse, conduct that, while it may seem reprehensible to us, reflects deeply felt cultural or religious convictions. But could they be the wrong kinds of stories from which to understand the politics of identity/difference and the claims for the free exercise of culture in the United States?

If all we had were stories like that of Tina Isa, we might rightly conclude that the identity/difference issues this society confronts were just another variation of the universalism versus relativism debates whose continuing irresolution generates employment for philosophers and other academics. We might rightly conclude that the more difference is recognized, the more vexing the effort to accommodate difference becomes. As the *People* story suggests, difference frequently appears to be the fearsome presence within, rather than the enlivening wellspring of, democratic politics.

Stories like the story of Tina Isa regularly make national news, riveting our attention to the seemingly threatening presence of cultural difference and the seemingly irreconcilable demands of justice on the one hand and cultural recognition on the other. Yet they constitute only one end of a continuum in which claims to the free exercise of culture are asserted. Some of these claims are disruptive and dramatic; others are barely visible and cause little stir. In between are a variety of means of asserting and responding to these claims. This essay examines the ways institutions and practices in the United States are being altered to accommodate difference, such that the politics of recognition can, with some confidence, be said to be alive and well in the everyday life of identity/difference.[14]

THE EVERYDAY LIFE OF IDENTITY/DIFFERENCE: EXAMPLES FROM CLOSE TO HOME

In the everyday world of identity/difference in the contemporary United States, recognition and accommodation, including important alterations in the practices of hospitals, welfare bu-

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reaucracies, and schools, are much more pervasive than scenes of dramatic conflict. Sometimes such alterations come about through visible struggles, sometimes through seemingly routine efforts to change outmoded ways of doing business, sometimes in response to the overt articulation of demands, sometimes as a result of quiet, behind-the-scenes negotiation. And, as we will see, recognition and accommodation often come as an after-the-fact acknowledgment of the changes that make difference a basic reality of everyday life. As Jeffrey Alexander and Neil Smelser put it, "Faced with the pressures of growing institutional complexity and cultural diversity, new forms of democratic integration have developed. Those working at the grass roots of American society have created new, normatively sanctioned institutional arrangements and new ways to negotiate conflicts."[15]

It is my contention that scholars interested in the politics of recognition need to pay attention to cases all along the continuum on which claims of difference occur. We must attend as much to the grass roots, to micropolitics of difference, as we do to the dramatic attention-grabbing cases like that of Tina Isa. If and when we do, we will be able to chart the terms on which such accommodations are made and the various ways that cultural difference and multiculturalism are transforming, often in barely visible ways, the fabric of American life.

West Side Story

A recent headline in the local newspaper of the town in which I live—"Parents Object to 'West Side Story' Production"—announced the latest controversy about the politics of the recognition and accommodation of identity/difference in Amherst, Massachusetts.[16] This controversy focused on the choice of the annual spring musical at the Amherst Regional High School. Most years, that is hardly news even for our local newspaper. This year things were different because members of the town's Puerto Rican community objected to the choice of *West Side Story*.

"It is a very racist play," said Elizabeth Capifali, a native New Yorker of Puerto Rican descent. Capifali, who started the protest, claimed that the play is filled with racial stereotypes.

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"It portrays Puerto Ricans in a negative light, hanging out on street corners, participating in gang violence." Hers was a generational protest, carried out in the name of a new generation against the taken-for-granted representational practices of an earlier generation. In an effort to stop the play Capifali wrote a letter to its directors saying that "The play is replete with racial discrimination, creating negative images of Puerto Ricans and poor European immigrants. . . . How do you think this addresses the goals of Becoming a Multicultural School System?" Her letter called attention to the school district's program that aims to adjust curriculum and programs to recognize and accommodate cultural difference in the community.

That Amherst has identified Becoming a Multicultural School System as a goal is itself perhaps one mark of the town's unrepresentativeness. Nonetheless, the goal of BAMSS, as the program is known, has itself played a large role in reorienting the politics of identity/difference in the schools. As the superintendent of schools explained,

> When I was hired as superintendent, which was over ten years ago now, the school committee identified for me dealing with issues of cultural diversity as one of the large challenges the new superintendent would face. What I discovered was that there were a lot of activities in the schools that had begun ten or twenty years before I got here that were directed toward multicultural education and affirmative action, toward making this an environment in which students and teachers had a great deal of respect for one another. What was lacking was any real commitment or leadership from administrators and the school committee. Beginning in 1991 I pulled together a group to talk about what it meant to be a diverse school district and what kind of goals we had to set for ourselves. A year later we brought a mission statement and goals to the school committee which they approved. . . . More recently we have reinvigorated the BAMSS steering committee to examine implementation and monitor progress in achieving the BAMSS goals.[17]

According to the BAMSS mission statement, the Amherst schools seek "to provide all students with a high-quality education that enables them to be contributing members of a multiethnic, multicultural, pluralistic society. We seek to create an environment that achieves equity for all students and en-

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sures that each student is a successful learner, is fully respected, and learns to respect others." BAMSS, the superintendent explained, "really gets into the issue of how people in the schools . . . respond to differences in the community. . . . What kinds of accommodations do the schools have to make in order to invite all peoples into the school on some sort of equal basis?"[18] It was precisely this question that the complaint about *West Side Story* addressed.

Others joined Ms. Capifali in protesting the choice of the play, including a member of the school board who said, "as a Puerto Rican I feel totally offended." Promising to raise the issue with the committee, he announced, "I will boycott the play if it is produced." Predictably, these claims of cultural insensitivity were initially resisted. The teacher responsible for directing the play, while acknowledging that "the depiction of students in gangs and the absence of positive depiction of Latinos . . . has concerned us," argued that the message of the story is not racism, but children leading adults to confront cultural difference.

Following the initial complaints there was a series of meetings among leaders of the Puerto Rican community—which was itself divided over the question of the play—and concerned parents, teachers, and school administrators. Everyone seemed to agree that the controversy surrounding the play should be used to advance the BAMSS goals.

Yet for a while it looked like no accommodation could or would be reached. The school superintendent issued public statements opposing what he called "censorship." "No group," he said, "neither in the majority nor in the minority, should have the ability to censor the decisions our community's educators make about what to teach, what to read, or what to produce on the stage." Discussion also occurred at a meeting of the school committee, but no resolution was reached. Petitions were circulated and signed, with coalitions forming across cultural lines and divisions deepening in the Puerto Rican community.[19]

Negotiations continued, negotiations that exposed the fact that racial, cultural, or identity groups often do not confront issues of recognition and accommodation in a unified fashion

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and that demands for recognition and accommodation, put forward by some as the minimum condition for genuine inclusion in a community, may be seen by others as a form of blackmail masquerading as victimization. In the end, *West Side Story* was canceled, and it was agreed that the issues sparked by plans to stage the play would be worked into classes at the middle and high school. At first, all sides declared victory, claiming that the real beneficiaries would be students of all heritages who would have an opportunity together to take steps on the path of multicultural progress.

But the debate did not end with the decision to cancel the play. Video stores reported a sudden surge of interest in their copies of *West Side Story*. Echoing the school superintendent's concerns about censorship, some parents organized demonstrations to protest the cancellation and to pressure the high-school principal to do something other than to let this episode slip quietly into Amherst's history.[20] And, in what some Amherst residents saw as an ironic twist, what had been a local effort to accommodate identity/difference took on the dimensions of a *People* magazine event. Cancellation of the play moved this case toward the divisive and dramatic end of the identity/difference continuum, at which accommodation of difference appears to some to threaten cherished values. National media picked up the story, and the People for the American Way, a nationwide First Amendment protection group, threatened to stage its own production of the play in Amherst and to recruit Rita Moreno, who won a 1961 Academy Award for her portrayal in the film, to speak to the townspeople.[21] What initially seemed to be an instance of the recognition and accommodation of identity/difference in daily life was quickly turned into a skirmish in a culture war.

Love Makes a Family

Almost four years earlier another headline in the local newspaper seemed to proclaim that culture wars would be fought in Amherst. However, in this instance, it was the schools' own efforts to recognize and accommodate identity/difference that sparked the controversy. This time the headline proclaimed

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"Exhibit Proposal Brings Controversy: Gay Family Photos May be Shown in Elementary Schools."[22]

That exhibit, *Love Makes a Family: Living in Lesbian and Gay Families*, containing twenty photos and captions, was created by a trio of local residents who had, without incident, presented an exhibit on multiracial families in the schools several years earlier. The photographer and writers of *Love Makes a Family,* with the support of the Amherst Gay, Lesbian, and Bisexual Parent Network and the High School Gay/Lesbian Alliance, first presented a proposal to the school superintendent to show the exhibit in the high school, the middle school, and the four elementary schools in the district. The superintendent told them that due to other commitments in the elementary schools he was not prepared to host the exhibit there, but that they should bring it to the high school, where it was shown without incident in October of 1995.

When the producers of the exhibit subsequently contacted him about mounting the show in the elementary schools, the superintendent said he would leave the determination of the appropriateness of presenting *Love Makes a Family* to the principals of each school, subject to the proviso that they consult with their respective school councils, which include teachers and parents, before determining whether the exhibit would be shown.

During January of 1996, as the process of consultation began, opposition mounted. Initially it was led by teachers who made arguments quite familiar in the ongoing debate about identity/difference in the United States. Some teachers said that they were concerned about being required to talk to children about an issue that parents might prefer to address. Others worried that "schools could take on so many social issues that teachers won't have time to deal with the regular curriculum." Still others suggested that "it would be better if the pictures were part of a larger exhibit on all kinds of families and fit in with the curriculum unit on families." Finally, a former leader of the local teachers' union came out against the exhibit on the grounds that the schools should not be selective in their embrace of and respect for difference. "Would there be an exhibit

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of little Catholic girls making Holy Communion or of men with guns and dead deer? I'm not sure the school system would validate the children of hunters."[23]

In spite of this opposition, each of the principals seemed disposed to host the exhibit, following the protocol that was used for the exhibit on multiracial families—that is, placing the photos in the foyer or the main hallway of the school so that every student would see it. One principal said that he believed that "the exhibit would build understanding among the entire community and help any student whose parent is gay or lesbian feel safer and more welcome in the school. It will prepare students to live in a pluralist society. Some may wish," he continued, "that they lived in a world populated by people just like themselves, but that is pure fantasy. It is the job of the public schools to prepare students to live in the world as it is."

Another principal said that the exhibit was a response to certain "facts." "If you come from a family with two moms or two dads, you are likely to be the object of teasing and name-calling. What is different is, especially for young children, threatening, so they react by trying to distance themselves from it. I would like to see that end. We need to inform kids of the importance of accepting difference and to try to ward off bias and prejudice that kids pick up at an early age." A third principal explained his support for the exhibit this way:

> We no longer live in a *Father Knows Best* world in which everyone is white, heterosexual, well off, and under the domination of a man. We can act like we do, and try to keep the schools from recognizing the worlds from which our students come, but that would be a deep disservice to them and to the community at large. Do we imagine that the children of Amherst, Massachusetts, do not see gay and lesbian families on the streets, in the supermarkets, at the movies? Schools have to deal with facts on the ground. That should be the guiding value as we think about cultural difference. If there are kids from gay and lesbian families in schools—and there are—we have several choices. We can ignore that fact or act as if that difference makes no difference. Or we can try to come to terms with it, recognizing the student population for what it is, helping everyone come to terms with the way the world really is.[24]

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This refrain, facing "the world as it really is" or dealing "with the facts on the ground," was crucial to the micropolitics of identity/difference as it played out around the exhibit on gay and lesbian families. Those in favor of recognition and accommodation presented their position as if they were merely coming to terms with changes that had already taken place. While the emerging default rule in Amherst seems to be recognition and accommodation, the schools were ready to practice only what might be called "defensive" or "reactive" accommodation, at least in regard to *Love Makes a Family*.

Yet even this defensive posture did not appease critics who, as the principals came out in favor of the exhibit, moved their fight to the school committee. They hoped that in a more openly political environment their concerns would receive a more receptive response. In meetings with the school committee, parents opposing the exhibit claimed that it could not be shown in a purely neutral, informational manner. They argued that it constituted advocacy of a particular way of living and that such advocacy was inappropriate for schools that should be serving all members of the community, including those for whom gay and lesbian lifestyles were abhorrent.

Eventually, the committee decided not to take a stand on the question of whether to allow the exhibit to be shown in the elementary schools, while reminding the principals of the need to follow the school system's so-called controversial issues policy. That policy states:

> The School Committee believes that controversy is an essential part of the democratic process and that an important goal of public education is to help students to develop the capacity to respectfully, critically and positively participate in the discussion and analysis of controversial issues. . . . Discussion and analysis of controversial issues has a legitimate place in our schools and should enable all participants to learn from one another. All staff and students have a right to express their opinions and a right to a respectful hearing. . . . Teachers will offer students and parents who might be offended by a presentation because of their religious or personal beliefs the opportunity not to participate in a presentation.

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Immediately after the committee's refusal to intervene, one principal announced in the school newsletter that the school would host the exhibit. Explaining her decision, she noted that

> We are not advocating anything but a commitment to having a school where children are free from the harm of oppressive language, harassment and put-downs. That is the driving force behind our decision to host the exhibit. It will provide an impetus for discussion. It is a vehicle for making visible a segment of our families who have, for a variety of reasons, been "invisible" members of our community. It can help us reinforce the belief that all families deserve respectful treatment within our community. . . . At the direction of the Amherst School Committee we will treat discussions of the exhibit in accordance with the Committee's Policy on Controversial Issues.

Still another announced his decision in a letter sent to all families.

> I have decided that we will host the exhibit. . . . We will put it in the context of a broader "celebration of families." Many people said that they would support the exhibit if it included a wide range of families. No such exhibit has been offered to us so we will create one by inviting every student and staff member to display a photo or drawing of their family at the same time the photo-text exhibit is on display. . . . Both the display by the artists and our "home-made" display will be exhibited in the hallways for everyone to see. This will accomplish several important purposes. . . . It will provide all students with an opportunity to acknowledge their families proudly, affirming that everyone matters and is included. It will provide us with a special opportunity to teach that mistreatment of any one [*sic*] is wrong. . . . However, the school will not endorse, and teachers will be directed not to endorse, any lifestyle.

Neither the school committee's action nor these responses quelled the controversy. Several gay and lesbian parents were troubled by the opt-out possibility, saying that it allowed those most in need of confronting and accepting the facts about gay and lesbian families to avoid doing so. They argued that all students should be required to see and discuss the exhibit, as had been the case with the photo exhibit of biracial families, and that anything less would suggest that there was something

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shameful about their families. Others argued that embedding the photographs of gay and lesbian families in an exhibit about all families missed the point. As one lesbian mother put it, "This is the worst perversion of tolerance and inclusion. We are yet again rendered invisible, or barely visible, made yet again into an oddity among all the smiling heterosexual families. The heterosexual family hardly needs to be acknowledged proudly. Why can't people stand to look into our faces and the faces of our families, without hiding those faces among hundreds of others?"[25]

And for fundamentalist opponents of the exhibit, neither the opt-out solution nor the proposal to include *Love Makes a Family* in an exhibit with photographs of other families went far enough. As a result, several families retained a lawyer and threatened to sue. In a letter to the superintendent, the school committee, and the elementary school principals announcing this intention, their lawyer stated:

> I represent a large and growing group of Amherst parents who oppose the decision to bring a photography exhibit entitled *Living in Gay and Lesbian Families* to the several Amherst elementary schools. . . . The parents want me to be clear that they fiercely resent your proposal to teach their children things that conflict with their deeply held religious and moral beliefs and that contradict their example and home training. The text accompanying the exhibit advocates a radical re-definition of marriage, patronizes widely held moral views of sexuality, and promotes acceptance of a lifestyle which many find morally and legally objectionable. It is advocacy, not diversity and tolerance education. . . . Many parents of all faiths the world over have deeply held religious convictions about the definition of marriage and the sanctity of monogamous sexuality, which they have tried to teach their children by precept, by example, and by exposure to religious training. Your exhibit teaches the children that their parental and religious training is of no importance, by saying that what they have been taught as wrong is actually right.

He further alleged that showing the exhibit would violate the school committee's controversial issues policy requiring the presentation of differing viewpoints. "A truly even-handed alternative," he claimed, "would be a presentation of diverse

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religious viewpoints on homosexuality." He argued that the exhibit should be "isolated, with viewing by parental permission, and only after informed consent." Otherwise, he claimed, the exhibit would violate the constitutionally protected liberty of parents to raise their children as they see fit. Finally, the exhibit was, he contended, both inappropriate for the age group in elementary schools and inconsistent with the Massachusetts sodomy statute.

In response to these allegations the superintendent defended the propriety and legality of the exhibit and, at the same time, offered a compromise. "Nothing," he wrote,

> . . . would be more inappropriate, it seems to me, than not to be tolerant of the views of those who do not want their children to see the exhibit, when the exhibit's main point is to contribute to understanding, acceptance, and tolerance of one group of families in the community. . . . I do not think it is necessary to present exhibits of other kinds of families because students have ample exposure through their homes, their friends and the media to images of a variety of families. . . . Moreover, no one will be discussing views on sodomy or same sex marriage or advocating homosexual lifestyles. . . . Accordingly, the principals and I have agreed that the photo exhibit will be displayed in school libraries where access by children can be controlled. . . . Parents will have the opportunity to exempt their children from participation in the exhibit or discussions about it.

The lawyer representing the objecting parents replied to the proposed compromise by saying "You have taken a step in the right direction, in the face of a lot of political pressure." But he noted that his clients "will not back down one bit. They are emphatically not ready for the show to go on." In a further exchange of correspondence with the superintendent he proposed that each child in each school bring in a picture of his or her own family and that these photos be displayed instead of showing the professionally produced exhibit of gay and lesbian families. This, he said, would not "set one type of family above another and allows all families to be considered equal. It celebrates the diversity of the school community, and teaches children about that diversity, without preaching or shoving particular views down anyone's throat."

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Several days later the superintendent rejected this counterproposal:

> Having seen the exhibit previously, I would not agree with you that it advocates same sex marriage and sodomy. If anything, the show only advocates for schools to be sensitive to the needs of children who grow up in gay/lesbian families. Since there are a growing number of such children in our schools, and since there is ample evidence that these children experience prejudice in our community, the exhibit is timely. The only question is an educational rather than legal one. Can we discuss this issue with young children? . . . The great majority of our teachers believe we can and are willing to prepare themselves to do so. Similarly, the great majority of the parents have indicated that they would like their children to see the exhibit.

After unsuccessful efforts were made to obtain a restraining order to stop the exhibit, it went forward in each of the town's elementary schools in accordance with the superintendent's compromise.

Yet, in the end, the way in which this example of accommodation and recognition was achieved left some very unsatisfied. Some gay and lesbian parents believed that the schools had "caved in" to the opposition. "We have tolerated nothing but heterosexual images in schools forever," one observed. "How they can call us intolerant because we won't let them stop showing portraits of our families in schools is beyond me." Another called the superintendent's defense of the exhibit troubling. "It seemed like grudging acceptance. We've got all these queer kids in schools, and we don't want them harassed. Well, okay, that's fine, but it seems to focus more on the schools' needs to maintain order than our need for something more than tolerance." "Something more than tolerance," as this parent explained it, meant that what the exhibit should have been used to do was to help students see that gay and lesbian families are more than tolerable. As she put it, "We want the community to see and embrace the value of the lives we lead."[26]

A school official, speaking about the final resolution of the dispute over the exhibit, expressed a similar concern. "I don't think it is a wonderful solution, but I think a lot of what happens in schools is a compromise to try to avoid confronta-

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tion, you know, making accommodations so that people don't have to deal with the harder issues. They don't have to say 'I think it is so important for your child to see that it is all right for people to actually be gay or lesbian that I'm not going to allow anyone to opt out.'" The superintendent, one employee in the schools suggested, "presented all this as if the real point was to show that there are no differences, other than the most obvious and superficial ones, between gay and lesbian and heterosexual families. The exhibit should have been an occasion to note the real, substantial differences that exist in this town and this society and to affirm them." Several other people in the school system worried that the superintendent had acted as if difference could be accommodated only if a majority of the community supported it. That means, one said, "that what we do is held hostage to the prejudices of the many. Where will the fault line be? Where will recognizing difference run up against the community's prejudice and what will we do then?"[27]

Others, however, defended the way the dispute over the exhibit was worked out. As one teacher put it, "It helped establish our schools as taking steps to honor multiculturalism. It recognized that what exists in our community must be a part of what we do in schools. A small step, sure, but one like many others we make every day in ways that no one notices." In his own defense, the superintendent noted: "Look, not everyone got exactly what they wanted, but I think we made an important point. There are different ways of living in our community, schools welcome difference, and if we are going to have that diversity we have to respect things we may not agree with. It isn't everything, but it is a pretty good lesson which the rest of the society would be better off if it learned."

When asked how he could explain the decision to cancel *West Side Story* while holding the *Love Makes a Family* exhibit, a school official responded: "We canceled the play when it became clear that what we initially thought was a neutral gesture could reasonably be taken as being inhospitable to a culture which we seek to make welcome in schools which for far too long have been self-consciously and proudly Eurocentric. We held the exhibit to do the same thing for another group which

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might rightly claim we have been less welcoming to its members than we should have been." Finally, another school official summarized what she saw as the relationship between these two decisions. "Every day," she said,

> in our classrooms, our gyms and recreational areas, our cafeterias, we are building what I call a tapestry of humanity. We bring people together who have different ways of being in the world in ways that help recognize those differences at the same time we build new communities by recognizing that there is much in common. Sometimes we won't do things that we would thirty years ago have done without thinking. Sometimes we will do new things that thirty years ago we would never have considered doing. Society changes, schools change. We are building a new community in which differences exist in ways that bring us together rather than driving us apart. In this way, by honoring difference we are also heading toward unity.[28]

RECOGNITION AND ACCOMMODATION IN EVERYDAY LIFE

How far is it from Tina Isa to the gay and lesbian family photograph exhibit in Amherst, Massachusetts? While the Isas claimed an exemption from valid law for a practice that was both violent and patriarchal,[29] the photography exhibit was well within what the law allowed, and it was an indication of one of the fissures in the armor of patriarchy. In one case, the difference that presented itself could be easily branded as unacceptable in a society committed to equality. In the other it was equality that demanded recognition and accommodation.

Throughout the United States the recognition and accommodation of identity/difference is going on every day, sometimes in barely visible ways, sometimes under the glare of media attention. Sometimes it is accomplished with barely a ripple; sometimes it comes only after intense conflict. For every instance like the Isas', in which the claims of difference are rejected, there are dozens like the decision to cancel *West Side Story* or to host *Love Makes a Family*. As Alexander and Smelser note, "polarized cultural rhetoric has obscured emergent processes of normative mediation. . . . American society has continually incorporated out groups through a complex

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interplay between affirming traditional values and expanding and hyphenating them."[30]

It is, of course, hardly coincidental that these cases involved contests over representations, over who should control the content of images of identity/difference. Those contests are as much a part of the micropolitics of difference as are more instrumental issues of inclusion and exclusion. Yet their impact on the views of culture and cultural difference of those who actively participate in them, or of students and staff, remains to be seen. In this sense it is important to recognize that the real everyday accommodation of difference is to be found in class discussions, encounters in the lunchroom, and play on athletic fields.

Yet one still might reasonably ask about the terms of inclusion exemplified in the cases I have described and whether these terms move us very far toward the free exercise of culture. Several points should be noted in response. First, in the daily accommodation of identity/difference Kammen's "dialectic of pluralism and conformity" seems to be alive and well.[31] Difference is recognized and accommodated in ways that are thought to unify, to articulate not only what we do not share but also what is shared across cultures, whether that be as simple as a desire for respect or as complex as a recognition of common aspects of quite different ways of life.

It seems that for the schools of even "liberal" communities like Amherst, the terms of inclusion require a denial or at least a diminution of difference, the reassuring acknowledgment that what seems different is only superficially so, that "they" are a lot like "us." This is because all discussions of difference are haunted by the specter of cases like the Isas'. Only those differences that can be folded into a narrative of our underlying unity are recognized and accommodated.

Moreover, much of what I am calling the everyday recognition and accommodation of identity/difference may be, as it seems to be in Amherst, reactive, emerging almost naturally from changes in the "facts on the ground." This means that recognition and accommodation will proceed at different rates in different places as distinct identity or cultural groups establish their presence. It also means that officials and citizens alike

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may be overly attentive to the possibility that each claim for recognition will invite others, in a multiplying and unlimitable progression.[32] While such concerns sometimes are an indication of bad faith, they also reflect reasonable beliefs that the proliferating recognition of difference may itself generate an accelerating realignment of institutional practices.

Tendencies to reject calls for a realignment of institutional practices by equating difference with disorder can be condemned as naive, or backward, or simply the repressive response of an intolerant culture fearful of losing now-expected privileges. Though such condemnations may sometimes be called for, they do little to advance the chance for a politically progressive response to claims of difference. Those who would champion difference and make it an energizing presence in democratic politics must learn to constitute difference in such a way as both to recognize the multiple and contradictory affiliations and identities that give our lives meaning and, at the same time, to tame the specter of disorder. As a result, as in the disputes about *West Side Story* and *Love Makes a Family,* accommodations may be framed only in the language of tolerance rather than in a language of affirmation.[33] It may be that it is only as a claim for tolerance that the daily recognition and accommodation of identity/difference can go on, but the language of tolerance, despite its limits, seems now to be one that the friends of difference can use in their efforts to win institutional respect for, and accommodation of, different ways of life.[34]

It may be that recognition and accommodation of identity/difference that expresses itself as a hope for unity, in reactive and defensive terms, and in the language of tolerance always will appear inadequate. Some may find that the kind of everyday recognition and accommodation that I have described falls far short of engaging what William Connolly calls "the enigma of otherness," or confirms that Todorov is right when he says, "the other remains to be discovered."[35]

Yet the daily practices of American institutions make it increasingly difficult to imagine that identity/difference does not exist and to escape engagement with it. Canceling plays and putting up photo exhibits are hardly the stuff of immense moral

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controversy. They hardly help us resolve the most dramatic or the most difficult cases in the pantheon of free-exercise-of-culture claims. But such events are part of the everyday world of cultural difference. As one school official put it, reflecting on the controversies in Amherst surrounding *West Side Story* and *Love Makes a Family,* "Behind the headlines great progress has been made with little or no fanfare, no publicity, few raised voices. The Amherst schools are being changed from the bottom up, day by day. That is the real story."[36] Whether or not he is right about the extent of the progress or the depth of the change that it represents, and while full discovery of otherness has yet to be achieved, it may be that just beyond our gaze, in the taken-for-grantedness of the everyday world, identity/difference increasingly is finding its place.

ACKNOWLEDGMENTS

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ENDNOTES

[1]John Jay, *The Federalist* (New York: The Modern Library, 1941), 9.

[2]Justice William Brennan, *Michael H.* v. *Gerald D.*, 491 US 141 (1989).

[3]*People*, 20 January 1992, 71–75.

[4]Ibid., 75.

[5]Ibid.

[6]See "The Cultural Defense in Criminal Law," *Harvard Law Review* 99 (1986): 1293; also Alison Dundes Renteln, "Culture and Culpability: A Study of Contrasts," *Beverly Hills Bar Association Journal* 22 (Winter 1987–1988): 17–21.

[7]See, e.g., *People* v. *Helen Wu*, 235 Cal. App. 3d 614, 634–46 (1991); *Eduardo Trujillo-Garcia* v. *Rowland*, 1992 US Dist. Lexis 6199; *State* v. *Aires Correia*, 600 A2d 279, 286–87 (1991); *People* v. *Kimura*, No. A-091133 (Los Angeles Cty. Super. Ct., 24 April 1985). But see *People* v. *Moua*, No. 315972-0 (Fresno Cnty. Super. Ct., 7 Feb. 1985) (mitigation of a sentence for kidnap-

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ping based on a recognition of the Hmong tribal practice of "Zij poj niam," or "marriage by capture").

[8]Opponents of multiculturalism and ethnic plurality, for example, often frame the debate in these terms. See, e.g., Arthur M. Schlesinger Jr., *The Disuniting of America* (New York: W.W. Norton & Co., 1992).

[9]Alexis de Tocqueville, *Democracy in America*, trans. Henry Reeve (Boston: John Allyn, 1876), 425. As Tocqueville observed at the start of the nineteenth century,

> The human beings who are scattered over this space do not form, as in Europe, so many branches of the same stock. Three races, naturally distinct, and, I might almost say, hostile to each other are discoverable amongst them at the first glance. Almost insurmountable barriers had been raised between them by education and law, as well as by their origin and outward characteristics; but fortune has brought them together on the same soil, where, although they are mixed, they do not amalgamate. . . .

[10]See Michael Kammen, *People of Paradox: An Inquiry Concerning the Origins of American Civilization* (New York: Knopf, 1972), 128.

[11]The term "identity/difference" is borrowed from William Connolly, *Identity\Difference: Democratic Negotiations of Political Paradox* (Ithaca, N.Y.: Cornell University Press, 1991).

[12]Austin Sarat and Roger Berkowitz, "Disorderly Differences: Recognition, Accommodation, and American Law," *Yale Journal of Law and the Humanities* 6 (1994): 285–316.

[13]For an important discussion of the challenge of recognizing and accommodating difference through the law, see Martha Minow, *Making All The Difference: Inclusion, Exclusion, and American Law* (Ithaca, N.Y.: Cornell University Press, 1990).

[14]For a discussion of the various meanings of the "everyday" in social and political thought, see Austin Sarat and Thomas R. Kearns, "Editorial Introduction," in *Law in Everyday Life*, ed. Austin Sarat and Thomas R. Kearns (Ann Arbor, Mich.: University of Michigan Press, 1993), 1–20.

[15]Jeffrey Alexander and Neil Smelser, "Introduction: The Ideological Discourse of Cultural Discontent: Paradoxes, Realities, and Alternative Ways of Thinking," in *Diversity and Its Discontents: Cultural Conflict and Common Ground in Contemporary Society*, ed. Neil Smelser and Jeffrey Alexander (Princeton, N.J.: Princeton University Press, 1999), 17.

[16]*Amherst Bulletin*, 5 November 1999, 1. Amherst, a racially and ethnically diverse college town of about 35,000 residents, is situated at the foothills of the Berkshire Mountains about one hundred miles west of Boston. As described in a recent article in the *Boston Globe*, "on the multiculturalism meter [it] is close to overheating. The UN flag flies on the common, and officials regularly pass international resolutions." See Beth Daley, "A Community Divided: Amherst Reflects," *Boston Globe*, 2 December 1999, B2. The discussions that follow include quotes from interviews I conducted during the fall of 1999.

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Unless otherwise noted these interviews were given with the understanding that the speakers' names would not appear in published material.

[17]Gus A. Sayer, interview by author.

[18]Ibid.

[19]Almost at the same moment, in what some saw as a bitter irony, the town celebrated Puerto Rico Day on November 19. As part of this annual event, which is designed to honor the town's Puerto Rican residents and their heritage, the Puerto Rican flag is flown over the town hall.

[20]"National Speech Advocates Enter the Fray," *Amherst Bulletin*, 3 December 1999, 1.

[21]Ibid.

[22]*Amherst Bulletin*, 19 January 1996, 1.

[23]Ibid.

[24]Interviews by author.

[25]Interview by author.

[26]Interviews by author.

[27]Interviews by author.

[28]Interviews by author.

[29]See Susan Moller Okin with respondents, *Is Multiculturalism Bad for Women?* ed. Joshua Cohen, Matthew Howard, and Martha C. Nussbaum (Princeton, N.J.: Princeton University Press, 1999).

[30]Alexander and Smelser, "Introduction: The Ideological Discourse of Cultural Discontent," 15.

[31]See Kammen, *People of Paradox*, 128.

[32]As Allison Renteln puts it, "Anarchy would reign if each person could claim a different cultural immunity from prosecution." Renteln, "Culture and Culpability," 26.

[33]See Tzvetan Todorov, *The Conquest of America: The Question of the Other*, trans. Richard Howard (New York: Harper & Row, 1984), 189–191; see also Tzvetan Todorov, *On Human Diversity: Nationalism, Racism, and Exoticism in French Thought*, trans. Catherine Porter (Cambridge: Harvard University Press, 1993), 32–90.

[34]Some point out what they see as the defining inadequacies of tolerance. For critics, though it appears relativistic, tolerance is also hierarchical. See Kristie McClure, "The Limits of Toleration," *Political Theory* 18 (1990): 362–391. See also Herbert Marcuse, "A Critique of Pure Tolerance," in Robert Paul Wolff, Barrington Moore Jr., and Herbert Marcuse, *A Critique of Pure Tolerance* (Boston: Beacon Press, 1965).

[35]Connolly, *Identity\Difference*, 43. Todorov, *The Conquest of America*, 247.

[36]Interview by author.

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Nomi Maya Stolzenberg

The Culture of Property

In the long, strained relationship between liberalism and community, property occupies a curious place. Many people have viewed private property as an agent of cultural disintegration and atomization, and for good reason. Private property seems to epitomize individual rights. At the same time, it bespeaks a basic commitment to a capitalistic economy organized around the principles of the market, made up of contractual exchanges among property owners exercising the quintessentially individual rights of private ownership and freedom of contract. The oft-noted shift from *Gemeinschaft* to *Gesellschaft* has long been associated with the rise of the market economy.[1] Yet, in ways that have still to be fully appreciated, private-property rights have also played a significant role in fortifying small subcommunities, cementing their boundaries, and endowing them with effective forms of collective control over both resources and members. A few scholars have studied the role played by property rights in constituting, shaping, and preserving communities.[2] But for the most part, the subject has been ignored both by scholars of property and by scholars of communitarianism, as the concern with preserving communal bonds and cultural traditions has come to be called. Notwithstanding the centrality of private property to liberalism, property rights have largely escaped the attention of contemporary communitarian critics.

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My aim is to rectify that inattention by pointing out the broad range of effects on communal life and cultural relations that result from establishing a system of private property. I refer to these as the cultural effects of private property, to distinguish them from strictly economic effects, such as maximizing wealth, promoting competition, or entrenching monopolies and inequalities of wealth and class; and from political effects, such as generating the material preconditions for an effective democracy. Most property scholarship focuses on the economic functions of property law; a smaller body of scholarship addresses the important political functions of property law; still less attention is paid to its cultural functions.[3] But property law in fact has profound consequences for cultural relations. Property law affects the ability of cultural groups to survive, and even to be formed in the first place. It affects the boundary lines drawn between and within groups. It affects the shape of power relations within and among different subgroups, and the nature of groups' interactions with one another. On a larger scale, property law affects the extent to which society generally is characterized by the presence of relatively insular, segregated, and autonomous subcultures. It also affects the degree to which cultural differences are correlated with differences in wealth and class. Which is to say, more broadly, that property law plays a significant role in determining the extent to which matters of distributive justice are intertwined with cultural relations.

This is not to say that property law is the exclusive, or even the dominant, force in determining the pattern of cultural relations in society. Many factors play a role in determining which cultural groups form, which thrive and which decline, whether they are tight-knit and insular or permeable and open, what their beliefs and practices are and whether they change or remain static, and what their relations with the rest of the world are like. But access to property and territorial control, through the acquisition of real estate, is often of critical importance to all of these dimensions of cultural and communal life. The cultural consequences of the system of private property to which liberalism is dedicated must be investigated before con-

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clusions about the impact of liberalism upon community can be drawn.

THE COMMUNITARIAN CRITIQUE OF LIBERALISM

Liberalism has long been viewed as the enemy of tradition and community. With its view of the individual as the fundamental unit of society, its dedication to individual rights, and its implicit commitment to a market-based economy, liberalism has seemed to pose three intertwined threats. First, *individualism,* by definition, seems to be opposed to the communitarian values of cultural autonomy and group rights. Second, the *market economy,* which fosters the mobility of property as well as social mobility, unleashes dynamics that seem almost guaranteed to erode the traditional elements of historically rooted communities, including social fixity, geographic proximity, territorial control, and ultimately the sense of attachment to a historic place. The third threat is posed by liberalism's elevation of *rights* over alternative conceptions of the good. Individual rights like freedom of choice can undermine traditional conceptions of social and religious duty, along with the familial and quasifamilial relationships of dependency, authority, and mutual obligation that rest on such conceptions. Consider, for example, how values of sexual autonomy and reproductive choice have challenged the traditional structure of authority within the family. Newfangled legal claims, such as a child's right to divorce her parents, represent the culmination of the ascendance of individual rights over communitarian conceptions of the good.

Many objections to rights-centered discourse emanated historically from conservatives, who oppose any form of political ordering that breaks down traditional structures of social and political authority. In their eyes, a system dedicated to protecting individual rights is objectionable precisely because, by elevating the individual over the social unit, it is calculated to undermine the patriarchal forms of authority that have traditionally undergirded family, communal, and political life.[4] A separate tradition of criticism focuses on liberalism's underlying individualism and the consequent devaluation of relation-

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ships, experiences, forms of being, and ways of life that cannot be reduced to an aggregate of individual behaviors or choices. Well before political theorists and sociologists writing in the 1980s popularized communitarianism, concerns about the fate of community in a liberal order had been voiced by early proponents of a vision of cultural pluralism, as well as by representatives of particular groups that felt a growing threat to their own existence.[5] As the disintegration of medieval corporatism gave way to new patterns of political order, and as the individual replaced the group as the political subject of the modern nation-state, not a few such newly minted individual subjects looked back ruefully to their groups' recent experiences of insularity and ghettoization, which, they now realized had (ironically) cemented their culture, fortified their faith, and even bestowed upon them meaningful forms of collective political power.

Notwithstanding the differences between conservatism and communitarianism, criticisms of individualism, the critique of rights, and the defense of tradition, culture, and community have always been interwoven. Radical egalitarian critics of the market have often made the critique of rights the basis of their sweeping criticisms of capitalism.[6] Indeed, the common concern of conservatives and communitarians—that rights rob people of care and social protection while legitimating their oppression—has been articulated nowhere more forcefully than by radical critics of the market.

But, curiously, the relationship between the egalitarian critique of the market and the conservative and communitarian critiques of individualism and individual rights has tended to go only one way. While critics of the market often rely on the critiques of individualism and rights, neither conservative nor communitarian critics of liberalism have had much use for the egalitarian critique of the market. The point may be most obvious in the case of conservatism. Conservative critics of liberalism rarely focus their ire on the institutions of the market, saving their wrath for the folly of individual rights instead. Much less frequently noted, but at least as significant, is the neglect of the market by communitarians. Only scant attention is paid to the market economy as opposed to other types of

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economic order in contemporary communitarian literature. Absent is sustained analysis of the consequences of a market-based economy for groups struggling to maintain their traditions, to create a distinctive community, or to establish a measure of cultural autonomy. Indeed, if one were just to read contemporary communitarian literature, one might well form the impression that cultural groups have no political economy—as if the pattern of cultural relations in society were somehow impervious to the distribution of economic power.

Only a moment's reflection suffices to suggest the implausibility of a complete disconnect between the distribution of wealth and the distribution of cultural power. We are all readily reminded that issues of concern to cultural pluralists and communitarians cannot plausibly be divorced from economics in the real world. But the fact remains that we lack an adequate understanding of *how* economic and cultural forces intersect. More basically, we lack a systematic way of *thinking* about how they interact.

Property—property rights and property law—may provide a way in. Property constitutes the access to material resources and territorial control that is essential to any real community. As soon as this material dimension of community is recognized, the long-standing idea that property and community are an antinomy starts to look implausible. The question remains whether *private* ownership of property is antithetical to communitarian and cultural pluralist aims. But even this version of the antinomy strains credulity, in light of the evident flourishing of small communities and parochial cultures in the midst of liberal societies. Across America, in the suburbs as well as the cities, immigrants and coreligionists are carving out communities in separate neighborhoods where they can establish their own communal institutions, social-service agencies, and financial institutions. And increasing numbers of communities have managed to secede from the established local-government jurisdictions to form their own local municipalities, composed of members of a single cultural or religious group.

Our question is whether these developments are enabled or thwarted by the liberal regime of private property. If private-property rights only inhibit the emergence of community, as

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legend would have it, then we should just chalk these developments up to the tenacity of communities in the face of adversity. But if it turns out that private-property rights *enable* these developments to occur, then a revision of our understanding of the relationship of private property to community—as well as of our understanding of the relationship of liberalism to communitarianism—is in order.

THE CULTURAL EFFECTS OF PRIVATE PROPERTY

Three case studies may serve to illustrate the dramatic range of private property's cultural effects. Our first case, the historic community of the Mashpee Indians in Cape Cod, Massachusetts, bears out the standard communitarian story about liberalism, illustrating private property's atomizing effects. Mashpee provides a vivid example of a shift from communal to individual ownership of property, which directly resulted in the erosion of the community's traditional boundaries. At the same time, the Mashpee story challenges any facile equation between cultural *erosion* and the utter *dissolution* of a culture by forcing us to consider the possibility that dramatic cultural change, even pervasive assimilation, may result not so much in cultural annihilation as in *new* forms of cultural identity and community, which are themselves worthy of respect.

Our second case, a religious community in Oregon called Rajneeshpuram, is in some ways less and in other ways more typical of communal experiments in America. Widely regarded as a cult, the Rajneeshees neither fit into our standard categories of minorities nor follow a conventional religious faith. Yet the community successfully availed itself of legal forms of property ownership used in the past by other religious groups to establish separate communities. It was only when the community moved beyond its assertion of private ownership to try to establish its own city that it ran into serious legal trouble. The case thus illustrates the significant advantages of private property over more overtly public forms of power, while at the same time demonstrating some of the limits on the forms of communal ownership and self-rule available in a private-property regime.

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The case of Rajneeshpuram also illustrates the folly of critics focusing exclusively on the relatively rare attempts of communities to establish explicitly public forms of power (e.g., local governments) while neglecting the much more ubiquitous use of private property and private contracts to establish mechanisms of external exclusion and internal communal control. Whether one comes to celebrate or to deplore the creation of effective group autonomy, it seems misguided to ignore the mechanisms of private government that depend on the coordinated exercise of individual property and contract rights, and that accomplish the tasks of excluding outsiders and controlling insiders most effectively.

These points are reinforced by our third case study, which involves the community, the town, and the possibly unconstitutional public school district of Kiryas Joel. Kiryas Joel—a village in the suburbs of New York City composed exclusively of Satmars, followers of an ultraorthodox Hasidic Jewish sect—came to notoriety when its inhabitants prevailed upon the state of New York to create a public school district within the village's boundaries, thereby enabling them to run a school in Yiddish, in conformity with their cultural preferences. The school district is avowedly not religious, but it was nonetheless immediately sued for violating the establishment clause of the Constitution, which prohibits the state support of religion. Although the state statutes passed to authorize the creation of the district have been held by federal courts to be unconstitutional, the ultimate legal fate of the public school district remains uncertain while the legislature keeps trying to craft an authorizing statute that will pass constitutional muster.[7]

Almost completely ignored in this controversy is the private community of Kiryas Joel, a highly insular, tight-knit, culturally distinctive community of coreligionists, organized around a charismatic, hereditary religious leader who dictates virtually every aspect of his followers' lives. Regardless of how the issue of the constitutionality of the school district is resolved, this community will continue to exist—which is to say that it will continue to exert its considerable powers of internal discipline vis-à-vis dissenting members of the community, as well as its formidable powers of exclusion whereby the homogeneity of

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the community is maintained. Only the most formalistic (or legalistic) of observers would deny that these powers of internal collective control and external exclusion constitute forms of *political* power. Yet, as a formal, legal matter, these powers flow entirely from the exercise of private, individual rights of property and contract. They are therefore not subject to the constitutional restraints that limit the exercise of governmental power.

Like Rajneeshpuram, Kiryas Joel serves as a reminder of the role private rights can play in helping subcommunities to escape the strictures of democratic, constitutional principles placed upon official governments. In their *private* capacity, members of Kiryas Joel have been able to style various conflicts with the surrounding secular culture as assertions of private individual rights (for example, objections to female bus drivers and to the state's refusal to provide special education services on the site of private religious schools).[8]

But Kiryas Joel also illustrates a successful attempt by a private community to secede from the existing local government and establish a local government of its own. Unlike Rajneeshpuram's experience, Kiryas Joel's incorporation as a separate municipality went unchallenged, and the Village of Kiryas Joel, unlike the Kiryas Joel school district, appears to be legally secure. The success of Kiryas Joel's village incorporation once again illustrates the power of private property—in this case the power of property owners to convert their private rights of ownership into political, local governmental, power. Indeed, the courts' reasoning in the cases rejecting the constitutionality of the school district only underscores the ability of private-property owners to use their rights to create, and legitimate, communal governmental power—so long as they follow certain basic rules of political engagement with the larger community.

Together, Mashpee, Rajneeshpuram, and Kiryas Joel provide a broad picture of private property's complicated cultural effects.

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Mashpee

The Mashpee are a group of Native Americans who do not fit standard definitions of a tribe. Brought together by a Christian missionary, the original members of Mashpee were survivors of a number of different Indian tribes that had been decimated by diseases spread by English settlers. The founder, who fashioned himself as their savior and benefactor, created a plantation in Cape Cod, Massachusetts, in the model of a trust, presided over by himself. This meant that the land was to be held in trust for the benefit of Mashpee members, in perpetuity. Eventually, management of the trust passed to the Mashpee themselves; but the land long remained subject to collective control and to a prohibition on transferring land to nonmembers. Even when land ownership formally devolved from the trusteeship to individual occupants, it remained subject to this members-only restriction on property acquisition until 1870.[9]

This group-based restriction on the transfer of property rights was linked to political power in two quite different ways. Internally, the members-only restriction solidified, and indeed helped to constitute, collective autonomy and control. Collective restraints prevented property from falling into the hands of outsiders, and kept the community together, both physically and culturally. They guaranteed that the Mashpee stayed together as a unit and provided them with a territorial base for self-rule. Externally, the collective restraints on property reflected the stigma attached to members of what was considered an inferior, backwards race. Native Americans were regarded as lacking the independence and mental capacity necessary to exercise the rights of private property responsibly—a notion that was thought to justify their exclusion from the franchise, as well as their inability to control the transfer of their own property.

In the mid-nineteenth century, the state finally agreed to extend the franchise to Mashpee men, but only in exchange for lifting the members-only restriction on property ownership. The members of Mashpee then voted on whether to accept this bargain, which made citizenship and the receipt of individual rights conditional upon the forfeiture of collective rights and

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privileges. As James Clifford recounts the story, Mashpee members clearly recognized the trade-off, with modernists within the community arguing in favor of accepting the political rights of citizenship and dissolving the group-based restrictions on property transfers. According to the modernists, permitting the Mashpee to become full-fledged private-property owners would lead to their economic betterment by enabling them to buy and sell real estate, while reflecting their status as political equals in the larger society. But traditionalists in the community cautioned that economic enfranchisement would be ephemeral and would only lead individual property owners to sell off their patrimony, lured by the quick profits sure to be promised by unscrupulous land speculators. Ultimately, the traditionalists predicted, short-term economic gains would evaporate, leaving members of the community even worse off both individually and economically (inasmuch as their homes and land would be lost) and collectively and culturally (in that the community as a whole would now be deprived of its traditional material, territorial, economic, and political base).

The modernists nonetheless prevailed. The Mashpee-only restriction on owning property was dissolved, and eventually the traditionalists' fears were largely borne out—by the 1970s more than half of the land in Mashpee was owned by people with no Mashpee heritage, and control of local government had fallen out of the hands of the Mashpee as well.

The history of Mashpee illustrates the standard story about the corrosive effects of private-property rights on traditional cultures and communal bonds. But more recent events in Mashpee provide a caution against equating the values of cultural tradition and difference with a simple, preservationist strategy of insulating groups from the market and wider political realms. In a telling episode, more than a century after the Mashpee Indians decided to dissolve the collective restraints on property, their descendants attempted to win back the property they had lost by bringing a land reclamation lawsuit. For centuries, federal law had denied Native Americans the unilateral right to choose to sell or otherwise transfer their land, requiring that the consent of the federal government be obtained prior to any transfer. In the 1970s Native American legal advocates turned

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the law to the advantage of Indians with the novel argument that land transferred without the federal government's consent rightfully still belonged to them.[10] But the Mashpee suit was nipped in the bud when the court held that the Mashpee did not constitute a tribe and were therefore not eligible to sue for the reclamation of land. Weighing in favor of the court's decision was the fact that Mashpee was originally created as a sort of ersatz tribe out of the remnants of various historic tribes, and the further fact that the Mashpee displayed a high rate of intermarriage and cultural assimilation—developments facilitated, of course, by the dissolution of the group-based restraints on property. By the time of the lawsuit, many individuals claiming descent from the original Mashpee (or what tribal activists refer to as the Wampanoag) tribe were culturally as well as physically estranged from their heritage; indeed the desire to *reverse* the process of cultural assimilation and *revive* a largely dormant culture seems to have accounted for much of the motivation behind the suit.

To the court, these facts simply negated the existence of an authentic Native American tribe. But commentators on the case widely agree that this judgment rests on a false equation of cultural tradition with cultural stasis.[11] (Indeed, the Wampanoags of Mashpee today are probably about to receive official recognition as a tribe, and its members bear witness to the development of a strong Wampanoag identity in the aftermath of the failed litigation.)[12]

Cultural anthropologists have long pointed out the ethnocentric fallacy of assuming that indigenous cultures are static and insulated from one another.[13] Every culture evolves in reaction to its surrounding environment, and in response to the presence of other cultures—a recognition that calls into question the logic of the court. But this recognition also calls into question the basis for criticizing liberalism's atomizing effects. After all, if every culture is dynamic and interacts with other cultures, if cultural boundaries are constantly shifting, and if assimilation does not *negate* cultural difference and identity, but merely redefines them, then what precisely is wrong with inducing change and assimilation? And if there is nothing inherently wrong with it, then what is wrong with enforcing the logic of

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the liberal market, which calls for the dissolution of group-based restraints on the transfer of property and simultaneously fosters the mobility of culture and of land?

Rajneeshpuram

The case of Rajneeshpuram provides an illuminating counterpoint to Mashpee. Rajneeshpuram, a religious commune in Oregon, was formed by the leaders of a Hindu-mystical-inspired religious group.[14] Probably unwittingly, the leadership followed a legal model that was already established in the nineteenth century when religious settlements, utopian communities, and Bible camps were at their peak of popularity. Under this model, the religious group formally incorporates a nonprofit or charitable corporation under the laws of the state. As a corporate entity, the religious group is entitled to acquire property; as a nonprofit or charitable entity, it is exempt from strictures that ordinarily apply to property owners, including the traditional common-law requirement to refrain from imposing limits on the transfer of land.

Traditionally, Anglo-American property law regarded restraints on the free transfer of land as being inimical to the institution of private property. Courts customarily voided restraints on the acquisition of land, first because they were perceived to limit owners' freedom to choose whether and to whom to convey land; and, second, because they were viewed as impeding the circulation of property in the market. A free and open market in property was regarded as the key to a productive economy. It was also regarded as a democratic, leveling force: the free circulation of property in the market was seen as having the salutary effect of breaking down dynastic fortunes and eroding the concentrations of wealth that give rise to social castes. For all of these reasons, restraints on the free transfer of real estate—or what the law evocatively calls restraints on the *alienation* of property—were generally prohibited as a matter of common law.

Of course, exceptions to this general law were always carved out, for example, for women and for people regarded as members of a backwards and inferior race, as we saw in the early history of Mashpee. Another important exception to the com-

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mon-law rule against restraints on alienation was drawn for charitable trusts and nonprofit corporations. Had such an exception not been drawn—and there were sharp critics of the policy decision to do so—it would have been extremely difficult for religious groups to set up the kinds of communities that they sought to establish.[15] Their desire was precisely to escape the licentiousness of the general society by creating controlled communities with behavioral restrictions on the use of property (for example, temperance pledges), as well as restrictions limiting occupancy of the property to members approved by the religious group. Applying the traditional common-law rules in favor of the free alienation of property would have prevented such strictures from being enforced, and severely interfered with the formation of such highly regulated communities. But the legal forms of the nonprofit corporation and the charitable trust, deemed to be exempt from legal rules against restraints on alienation, provided a way of circumventing the traditional rules.

Like some earlier religious groups, Rajneeshpuram adopted the legal form of a private nonprofit corporation, which made it exempt from the rules requiring individual control over the sale and transfer of land. This legal form is particularly well suited to a community like Rajneeshpuram, run as a commune and presided over by a strong religious leader. That individual residents lack the rights of private-property owners themselves is perfectly compatible with the commune format; that the corporate entity exercises all of the rights of a private-property owner comports with devotion to, and dependence on, a charismatic leader. From a legal standpoint, the nonprofit corporation that owns the land in Rajneeshpuram, run by the Rajneesh leader and his close associates, is a single legal actor. Like any individual property owner, it is essentially free to use its property, and to grant (or deny) entrance to others, as it likes. How the managers of the corporation choose to use the property is seen as no more the court's business than an individual private-property owner's decision about whom to invite for dinner.

It was only when the community attempted to assume the form of a public, municipal corporation (a city) in addition to the form of a private corporation that it ran into trouble.

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Although the Rajneeshees followed the routine democratic procedures prescribed by state law for establishing a new municipality, the Oregon Supreme Court determined that permitting a local government to be established within the geographic confines of Rajneeshpuram would be tantamount to establishing a miniature theocracy, in contravention of the constitutional prohibition against state-established religion.[16] According to this logic, using the legal form of private corporate ownership to create a homogenous population, ruled by a charismatic leader and devoted to the same religious way of life, is fine; but drawing the boundaries of a political jurisdiction to be coterminous with such a population is constitutionally illegitimate.

Kiryas Joel

Kiryas Joel took the logic of this public-private distinction several steps further. The case of Rajneeshpuram demonstrated how collective power can be instituted through the legal form of a private corporation. But corporations, like trusts, lodge control over property exclusively in the managers, or leaders, of the community. Individual members, who may end up occupying property and establishing homes in the community for decades—even generations—are, from a legal point of view, more like guests than owners. They are not merely *restricted* with respect to the right to control the use and transfer of the property they occupy; they have no legal right to the property at all. Legal forms like nonprofit corporations and trusts are thus well-suited to groups like the Rajneeshees, or traditional Mennonites, or nineteenth-century utopian communities—all of which reject the very principles of private ownership and participation in the market economy in favor of a commune-like economic and social structure. But the inhabitants of Kiryas Joel do not reject either private property or the market economy. Despite their general stance of opposition to secular, modern life, Satmars show no reluctance to own private property or participate in market exchanges. And, notwithstanding the pervasive role of the rebbe, the religious leader who controls every aspect of Satmar life, a commune was never what the Satmars had in mind. For all their defiance of the dominant cultural conventions, the Satmars in Kiryas Joel are conven-

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tional property holders. Like most Americans, they either own or rent their own family home. In Kiryas Joel there is no single corporate entity that owns and controls all the land in the community; instead, the ownership of real estate is dispersed among the many individuals and families making up the community.

This raises the question of how the real estate in Kiryas Joel remains safely, and exclusively, in the hands of Satmars. We have already seen in the case of Mashpee how freeing individual owners from any legal obligation to keep property within the hands of community members can easily lead to individual owners selling off their piece of the cultural patrimony. Why has this not happened in Kiryas Joel, where the population is reputed to be 100 percent Satmar—and what would keep it from happening in the future?

Roughly speaking, there are two basic ways to prevent property from being transferred to outsiders in the absence of either corporate control or publicly enforced restrictions. The first is to establish formal restraints on the alienation of private property. Formal restraints on the transfer of property to outsiders can be instituted in the form of mutual pledges or covenants that, in the quaint terminology of the common law, run with the land. What this means, in plain English, is that (subject to certain legal restrictions) private owners can enter into mutual agreements regarding the use or transfer of their property that bind not only them, but also successive owners of the property in question. Thus, the Satmars could have entered into a series of restrictive covenants, covering all of the property in the community, and embodying an obligation not to sell to non-Satmars, or not to sell without the community's consent. Such a network of restrictive covenants would effectively simulate the sort of collective control over property transfers afforded by the corporate/commune structure without eliminating the other prerogatives of private property ownership.

However, the legal validity of such covenants is questionable. On the one hand, restrictive covenants embodying restraints on the sale and rental of property are widely enforced in the context of planned communities and condominiums governed by homeowner associations. For example, consent re-

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quirements, which require the approval of other members or of a homeowner association, are now a common and legally approved feature of the contemporary real-estate landscape.[17] On the other hand, racially restrictive covenants—once a common device used to prohibit the transfer of property to blacks, Jews, and other disfavored minorities—were declared unconstitutional by the United States Supreme Court more than five decades ago.[18] Interestingly, there has not been any authoritative ruling declaring whether religiously restrictive covenants, or ethnic or other nonracial, group-based restrictions, are similarly illegal. Such covenants might well be deemed to violate civil-rights laws prohibiting discrimination in the real-estate market; but it is also conceivable that they could be found to be legally valid expressions of the rights to freedom of association and choice. Further complicating matters is the possibility of using consent requirements, which do not overtly distinguish buyers or renters on grounds of religion or group membership, but which could easily be used to filter out nonmembers in ways that might escape legal monitoring.

The possibility of using consent requirements to exclude nonmembers of the Satmar community points to the more general practice of informal choice—the second basic way that exclusion is often achieved. It is commonly said, by way of explaining situations like Kiryas Joel, that people just like to live with their own kind. The implication is that the existence of a homogeneous population is a matter of *mutual* choice: Satmars don't want to mix with non-Satmars, and non-Satmars don't want to mix with Satmars. Buried in this commonplace are both a descriptive and a normative claim. Descriptively, the claim is that the *cause* of such segregation is not legal compulsion, but rather happily harmonious individual preferences. Normatively, the implication is that there is nothing wrong with such a situation if everyone is happy and no one is being coerced. This logic is readily applied to Kiryas Joel; the Satmars wanted to secede and form their own community, and their neighbors were relieved to have them do so. (Indeed, the non-Satmars insisted that the boundary line be drawn to ensure that not one of their properties fell within Kiryas Joel.) If there are no non-Satmars seeking entry into Kiryas Joel's real-estate market,

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then the answer to the question of how homogeneity is maintained seems to be, simply, personal choice.

Ideally, choice is reciprocal—the prospective buyers (or renters) whom the homeowner would reject have as little interest in acquiring the property as the homeowner has in them. But homeowners have the freedom to reject a particular buyer or renter, or to choose not to sell or rent at all, even when the choice is not reciprocal. Even in the absence of formal covenants restricting the freedom to transfer property, individual property owners can easily exercise their right to choose in a way that expresses a communal consensus against transferring property to outsiders. Indeed, the stronger the extralegal bonds cementing the community are, the less the need to formalize those bonds in legal covenants. In a tight-knit community like Kiryas Joel, bound by a strong sense of mutual obligation and fealty to a religious leader, an agreement not to convey property to outsiders could easily be instituted as a social practice without being formalized as a legal covenant—and could thereby escape potential legal detection and invalidation.

There are two basic problems with the informal-preference model of group formation and preservation. First, even within a community as cohesive as Kiryas Joel, actual individual preferences are inevitably not quite as harmonious as the model suggests. As in Mashpee, there have been defectors from the community consensus in Kiryas Joel, some of whom have been subjected to harsh internal discipline. Such internal dissent challenges the descriptive accuracy of the choice model of group-based exclusion. The second problem stems from the lack of harmony between the preferences of outsiders and insiders. Perhaps no one is seeking entry now, but it is only a matter of time before a non-Satmar will want to settle in Kiryas Joel. At that point, exclusion can no longer be said to be a function purely of *mutual* choice, even if every Satmar remains opposed to the admission of non-Satmars.

To the extent that we are concerned about the justice of excluding people from property on the basis of their group affiliation, focusing on the constitutionality of a public entity with a homogeneous population seems a lot like having the tail wag the dog. After all, there have been countless school dis-

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tricts and local governments in America with religiously homogeneous populations (usually members of the same Protestant denomination). According to the prevailing legal logic, these situations are unproblematic so long as the boundaries of these governmental jurisdictions were not deliberately drawn to accommodate a particular religious group, but rather "just happen" to contain homogeneous populations. But of course local populations never just happen to be homogeneous. Keeping outsiders out, and suppressing factionalism within, require effective mechanisms of social control. As we have seen, in a liberal society, where governmental restraints on who can live where are prohibited, private property rights—exercised in a coordinated fashion—can do the trick.

COMMUNITARIANISM FROM THE BOTTOM UP

Cases like Rajneeshpuram and Kiryas Joel refute the long-standing notion that a liberal regime of individual rights and private property is inimical to communal autonomy and the preservation of distinct cultural traditions. In lieu of the sort of top-down approaches to separating groups and endowing them with their own territory and jurisdiction found in nondemocratic societies (like the former Soviet Union or the Ottoman Empire) or in consociational democracies (like Switzerland), the coordinated exercise of the rights of private property can similarly serve to separate and endow subgroups from the bottom up. It is true, as the Mashpee case illustrates, that a liberal regime of property rights also creates certain threats to traditional ways of life that may be avoided in nonliberal regimes. But it would be a gross oversimplification to conclude that liberalism is simply antithetical to communitarian goals and forms of social and political organization. On the contrary, "groupness" flourishes in, and not despite, liberal regimes.

That said, the shape that "groupness" takes in liberal and nonliberal regimes is not exactly the same. To observe that communitarianism can be fostered from the bottom up as well as from the top down is not to say that the strategies afforded by private property give all groups the same opportunities, or that any group has precisely the same opportunities as found in

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top-down regimes. Both liberal and nonliberal regimes enable *and* disable the formation and perpetuation of cultural subgroups, in different and distinctive ways.

Perhaps the most obvious way in which bottom-up and top-down regimes differ is in the role played by economic wealth. In theory, top-down regimes can endow groups with separate territories and independent political jurisdictions regardless of the economic resources possessed by the groups. By contrast, the ability of a group to amass private property in quantities sufficient to establish effective forms of community control necessarily depends upon access to economic resources. The founders of Kiryas Joel and Rajneeshpuram had to possess substantial amounts of capital in order to acquire large numbers of contiguous lots in suburban New York, and a large open tract of land in Oregon. The Mashpee could never have obtained such prime real estate without the intervention of their self-styled paternalistic founder. Without such benevolent interventions, many groups simply lack the economic means to establish comparable islands of territorial and cultural autonomy. In top-down regimes wealth might influence the readiness of political rulers to recognize a particular group and endow it with valuable resources, but in principle the link between economic and cultural power can be broken. By contrast, in bottom-up regimes the link between economic and cultural power is much tighter—indeed, cultural power appears in many respects to be a mere *effect*, or privilege, of economic power in a private-property-based regime.

This is not to deny that communities of poor people are found in liberal societies. On the contrary, the segregation of rich and poor—ghettoization—is positively fostered by the dynamics of the real-estate market. But this phenomenon itself reflects the tight correlation between the distribution of economic power and the distribution of cultural power, which distinguishes liberal from nonliberal regimes. Of course, the ghetto is hardly unknown to nonliberal societies, but precisely what distinguishes what we might call the liberal ghetto from the traditional one is the feature of class segregation. Ghettoized subcommunities in traditional nonliberal regimes—epitomized by the original Jewish Ghetto of sixteenth-century Venice—typically exhibit a

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full complement of classes, often living side by side (or stacked on top of one another).[19] By contrast, subcommunities in market-based regimes tend to be economically homogeneous.

The salience of wealth in shaping cultural boundaries in a liberal regime raises questions about the justice of the distribution of cultural power in liberal regimes. Questions about the validity of group-based restrictions on private property should not be resolved without attending to the interaction between economic and cultural power in a private-property regime. Consider the recent controversy over community land trusts—nonprofit corporations established to extend the benefits of private property ownership to the poor.[20] Community land trusts sell homes, and rent the underlying real estate, to eligible applicants at prices set substantially below market value. They maintain the affordability of the properties by restricting the ability of the owner/renters to transfer their property, and hence to profit from appreciation in the real-estate market. Owner/renters must either sell their property back to the trust, or sell with the consent of the trust, at below-market prices. Either way, both the price limitation and the restraints on free transfer offend the traditional common-law rule against restraints on alienation. The question posed in lawsuits challenging the validity of these restraints is essentially the same as that posed in cases concerning religious communities, like the nineteenth-century utopian societies Bible and the twentieth-century spiritual commune: should communal trusts and nonprofit corporations be permitted to evade common-law rules that require property to be freely alienable? The religious cases posed a basic conflict between the value of communal autonomy on one hand, and the values of the free market on the other; the community land trust adds the question whether economic justice justifies overriding the mechanisms of the free market. Indeed, it is difficult to know what best serves the cause of economic justice in such a case—enforcing the restrictions in order to maintain the affordability of housing, or letting the first generation of beneficiaries capture the profits available to them in the open real-estate market? The community land trust thus poses a dilemma similar to that confronted by the traditionalists and modernists in Mashpee: opting out of the market

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in order to insulate a community from corrosive market forces versus allowing individual members to partake of the economic opportunities in a free market, even if that entails the dissolution of the community.

Such dilemmas reflect the tightness of the link between the distribution of wealth and the pattern of cultural pluralism in a liberal, market society. Bottom-up communitarianism is further distinguished by the basic tension between the norms of an open market and open society, on the one hand, and group-based restrictions, on the other. The validity of group-based restrictions on private property is always open to challenge in a liberal regime on two basic legal grounds: laws against discrimination and laws against impeding the free circulation of property. As we have seen, such laws do not mean that all group-based restrictions on the transfer of property are invalid. Exceptions to antidiscrimination and pro-alienation laws have frequently been carved out for the sake of protecting other liberal values, such as freedom of religion and freedom of association. Nonetheless, antidiscrimination law and rules against restraints on the alienation of property together form a significant countervailing force. Although market forces give rise to concentrations of economic and cultural power—wealthy enclaves and poor ghettos—they also foster economic and social mobility, which tends to break down, or at least reshuffle, cultural groupings. This, of course, is what gives rise to the communitarian lament: alienable property permits forms of cultural integration (or dis-integration, from the communitarian point of view) unimaginable in more traditional, top-down societies, as the history of Mashpee bears out.

Whether the personal mobility promoted by the freedom to transfer property is seen as an engine of cultural integration or disintegration is complicated, as we have seen in the Mashpee case. It may well be that the more cultures are separated and insulated from one another, the better preserved they will be. But what does it mean to preserve a culture—to render it static or to permit it to develop? The tension between the goals of cultural preservation and the goals of cultural development is built into the very concept of a cultural tradition. Property law clearly has consequences for how this tension is resolved in any

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particular case. Inasmuch as property law allows collective restraints on the transfer of property, cultural interactions may well be inhibited and cultures may become "pickled."[21] Conversely, if property law discourages collective restraints, exposure to other cultures will be promoted with potentially dynamic—or destructive—results. Depending upon how the rules of property are drawn, the law will favor either the freedom of group seclusion or the freedom of others to influence the secluded group.

Property law has consequences for all three of the dimensions of cultural life identified above: (1) the extent of cultural dynamism as opposed to stasis; (2) the extent of cultural integration as opposed to group seclusion; and (3) the extent to which access to wealth shapes the pattern of cultural relations. In comparison to top-down regimes, bottom-up communitarianism tends to promote inter-group integration and cultural innovation, even to the point of intra-group disintegration; but the dynamic of inter-group integration is significantly offset by the tendency of inequalities of wealth to become entrenched in the form of economic segregation, which in turn shapes, and limits the formation of, cultural groups. This, of course, is a vastly oversimplified picture of private property's cultural effects. But even an oversimplified picture represents an advance over property scholarship that pays little heed to the cultural dimension of property, and communitarian scholarship that neglects the property dimension of culture. The time has come for scholars of property and scholars of community and cultural pluralism to come together and help us to chart out the complex interrelationship between property and culture.

ENDNOTES

[1]Ferdinand Tonnies, *Community and Society*, trans. Charles P. Loomis (East Lansing, Mich.: Michigan State University Press, 1957).

[2]See Robert Ellickson, "Property in Land," *Yale Law Journal* 102 (1993): 1315; Gregory Alexander, "Dilemmas of Group Autonomy: Residential Associations and Community," *Cornell Law Review* 75 (1989): 1. Also see Carol Weisbrod, *The Boundaries of Utopia* (New York: Pantheon Books, 1980) for

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an analysis of the role of contract rights in the formation of utopian communities.

[3]On the political functions of property law, see, e.g., Gregory S. Alexander, *Commodity and Propriety: Competing Visions of Property in American Legal Thought, 1776–1970* (Chicago: University of Chicago Press, 1997); Frank Michelman, "Possession and Distribution in the Constitutional Idea of Property," *Iowa Law Review* 72 (1987): 1319.

[4]See Kirk F. Koerner, *Liberalism and its Critics* (London: Croon Helm, 1985), 6–9; Don Herzog, *Poisoning the Minds of the Lower Orders* (Princeton, N.J.: Princeton University Press, 1998).

[5]Influential communitarian texts of the 1980s include, inter alia, Michael J. Sandel, *Liberalism and the Limits of Justice* (Cambridge: Cambridge University Press, 1982); Alasdair MacIntyre, *After Virtue: A Study in Moral Theory* (Duckworth: London, 1981); Robert Bellah, Richard Madsen, William M. Sullivan, Ann Swindler, and Steven M. Tipton, *Habits of the Heart: Individualism and Commitment in American Life* (Berkeley, Calif.: University of California Press, 1985). For an example of earlier cultural pluralism, see Horace Kallen, *Culture and Democracy in the United States* (New York: Boni and Liveright, 1924). On a particular group's reaction, see David N. Myers and William V. Rowe, eds., *From Ghetto to Emancipation: Historical and Contemporary Reconsiderations of the Jewish Community* (Scranton, Pa.: University of Scranton Press, 1997).

[6]For example, see Karl Marx, "On the Jewish Question," in *The Marx-Engels Reader*, 2d ed., ed. Robert Tucker (New York: Norton, 1978).

[7]See *Board of Education of Kiryas Joel* v. *Grumet*, **114** US 2481 (1994); *Grumet* v. *Pataki*, 675 N.Y.S.2d 662 (1998).

[8]See *Board of Education of the Monroe-Woodbury Central School District* v. *Weider*, 531 N.Y.S.2d 889 (1988); *Bollenbach* v. *Monroe-Woodbury Central School District*, 659 F.Supp. 1450 (1987).

[9]This discussion of Mashpee is based on James Clifford, *The Predicament of Culture: Twentieth-Century Ethnography, Literature, and Art* (Cambridge, Mass.: Harvard University Press, 1988), 277–346.

[10]On the legal treatment of Native American property, and the development of the reclamation strategy, see Linda S. Parker, *Native American Estate: The Struggle Over Indian and Hawaiian Lands* (Honolulu: University of Hawaii Press, 1989); Robert N. Clinton and Margaret Tobey Hotopp, "Judicial Enforcement of the Federal Restraints on Alienation of Indian Land: The Origins of the Eastern Land Claims," *Maine Law Review* 31 (1979): 17.

[11]See Clifford, *The Predicament of Culture*, 277–346; Martha Minow, "Identities," *Yale Journal of Law and the Humanities* 3 (Winter 1991): 97.

[12]See William A. Davis, "Spirit of the Wampanoag: Tribal Leader Russell Peters Recalls Battles That Helped Forge Their Identity," *Boston Globe*, 21 March 2000, D1.

[13]See, e.g., James Clifford and George E. Marcus, *Writing Culture: The Poetics and Politics of Ethnography* (Berkeley: University of California Press, 1986);

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George E. Marcus and Michael M. J. Fischer, *Anthropology as Cultural Critique: An Experimental Moment in the Human Sciences* (Chicago: University of Chicago Press, 1986).

[14]See Frances FitzGerald, *Cities on a Hill: A Journey Through Contemporary American Cultures* (New York: Simon & Schuster, 1986), 247.

[15]See Gregory Alexander, "The Dead Hand and the Law of Trusts in the Nineteenth Century," *Stanford Law Review* 37 (1985): 1189–1266. On the application of laws against restraints on alienation to religious corporations, see Weisbrod, *The Boundaries of Utopia,* 29–30.

[16]*Oregon* v. *City of Rajneeshpuram*, 598 F.Supp. 1217 (1984).

[17]The common law has been reformed to allow such covenants, which would have been void under the traditional rule against restraints on alienation. See Susan French, "Tradition and Innovation in the New Restatement of Servitudes: A Report from Midpoint," *Connecticut Law Review* 27 (1994): 119.

[18]*Shelley* v. *Kraemer*, 334 US 1 (1948).

[19]Michael Walzer, *On Toleration* (New Haven, Conn.: Yale University Press, 1997).

[20]See Christopher A. Seeger, "The Fixed-Price Preemptive Right in the Community Land Trust Lease: A Valid Response to the Housing Crisis or an Invalid Restraint on Alienation?" *Cardozo Law Review* 11 (1989): 471; David M. Abromowitz, "An Essay on Community Land Trusts: Towards Permanently Affordable Housing," *Mississippi Law Journal* 61 (1991): 663.

[21]The pickling formulation comes from Professor Wendy Gordon.

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Lawrence G. Sager

The Free Exercise of Culture: Some Doubts and Distinctions

THE EXPRESSION "free exercise of culture" follows on the free exercise of religion: in the hands of some of its most ardent advocates, the constitutional ideal of "free exercise" means that it is a matter of considerable regret whenever a person is thwarted in the pursuit of that which is required by his or her religious beliefs. On this view, religiously motivated persons have a presumptive right to disobey otherwise valid laws—a right that can be defeated only upon a showing that a very important governmental interest requires that they, like other citizens, be required to obey the law in question. Given the surprising prevalence of this general picture of religious liberty, it is tempting to take it as given, and then expand it to include the liberty of persons who are members of special groups within our society—groups that share a common and distinct web of beliefs, practices, and attributions of value and meaning. Persons in the grip of such a cultural web, the suggestion would go, ought to enjoy a presumptive right to act according to the dictates of their culture, notwithstanding the requirements of otherwise valid laws. This might or might not be a claim about what the Constitution itself requires; it is at the least a claim that we would be a more just society were we to recognize such a right and shape our laws accordingly.

In this blunt form, the idea of a free exercise of culture gives rise to serious concerns about the scope and distribution of liberty within our political community. In this essay, I offer

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some thoughts about the nature of those concerns and about possible directions for the refinement of the idea of a free exercise of culture. Perhaps the best place to begin, however, is with the free exercise of religion.

THE FREE EXERCISE OF RELIGION AND THE FREE EXERCISE OF CULTURE: PARALLEL DOUBTS

The idea that religiously motivated persons are sovereigns among us, possessed of a presumptive right to disobey otherwise valid laws, runs headlong into two substantial, related objections.[1] The first is that religions are enormously diverse in the conduct they underwrite. Religious belief can inspire virtue, reflection, and sublime beauty. Religious belief can also inspire bigoted hatred and exploitation. Some of the most ennobling threads of human history belong to religion; the same can be said of some of the most grotesque and evil. Religiously motivated conduct is far too vast and too varied a category of behavior to be a plausible candidate for a presumptive exemption from the laws that bind the rest of us.

The second objection applies to even entirely laudable religious commitments. Perhaps the point can best be made by some examples. Consider the following pairs of constitutional claimants:

- Two women wish to open up soup kitchens in their homes, which are in residence-only zones. Both are deeply committed to relieving the suffering of the poor, but only one considers her commitment to derive from the commands of her religious faith.
- Two sets of parents wish to homeschool their children, and face legal obstacles. Both couples are moved by concern for the moral and cognitive development of their children, but only one couple is guided in this respect by the precepts of their religion.
- Two same-sex couples wish to be married. Both couples are deeply in love and committed to a shared life, but only one is motivated by the precepts of their religion to marry within their gender.

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The reader can see the pattern, which could be extended in many directions. The point is this: At the heart of our constitutional instincts and tradition is the moral spark of what we can call "equal liberty." It is the ideal of equal citizenship among a free and diverse people. Nowhere is that general constitutional ideal more vivid than in the domain of religious liberty. It is plainly impermissible for the state to privilege Christians over Jews, or Jews over Muslims, or anyone over anyone else by virtue of their religious beliefs. How could this essential proposition of political and constitutional justice license the privileging of what we describe as religious commitments over other deep, laudable, and binding human commitments?

Together, these two objections—one based on the vast and morally variegated scope of religiously motivated conduct, and the other on the indefensibility of privileging such conduct over other deep and laudable human commitments—make implausible the presumptive liberty reading of free exercise of religion. It might seem to follow that the more radical idea of a free exercise of culture is simply a non-starter. But that need not be so.

To reject the presumptive license of religious believers to disobey applicable law is not to reject the idea of free exercise of religion, merely one understanding of that constitutional precept. We can reconceive of free exercise as an instantiation of the broad ideal of equal liberty rather than as a bizarre exception to that ideal. On this account, the Constitution neither privileges nor ignores religion. On this account, the Constitution protects religion in general and minority religious faiths in particular from discrimination bred of the hostility or indifference to which such faiths are notoriously vulnerable. This equal liberty reading of the free exercise of religion makes moral sense of the idea of free exercise, explains much of our somewhat anomalous constitutional past in this area, and charts an attractive course for our constitutional future.

And, once our understanding of the free exercise of religion is rehabilitated, the normative distance between religion and culture may not be so very great. Some of the most appealing claims for free exercise involve circumstances where culture sits just behind and—in public perception at least—dominates religious belief. This is certainly true of *Wisconsin* v. *Yoder*, for

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example, in which members of the Amish sect won the constitutional right to remove their children from any formal regime of education at the age of fourteen—two years earlier than was permitted by state law.[2] *Yoder* is by a considerable margin the most robust recognition of free exercise rights in our constitutional jurisprudence, and the Supreme Court's opinion placed heavy emphasis on the Amish way of life, noting, for example, that "the Amish community has been a highly successful social unit within our society, even if apart from the conventional mainstream."[3] It is also true that cases in which the Court has rebuffed the free exercise claims of Native American religions have been singularly controversial;[4] it is possible that the criticism with which these decisions have been met is fueled in substantial part by the sense that Native American religious groups are the remnants of distinct cultures fighting for survival.

But any embrace of the free exercise of culture must respond to concerns that closely parallel the problems we have already encountered with regard to the free exercise of religion. First, were the state to permit cultural groups to create their own microenvironments of law, it might well find itself licensing these groups to inflict substantial and unjust harm on those over whom they claim authority. And second, here too, there is a problem of the maldistribution of liberty: under what circumstances, if any, are we justified in selectively extending liberties to those persons who act under the goad of deep cultural norms while withholding those same liberties from those who act out of abiding moral, political, familial, or artistic commitment?

These points call for some amplification, which I hope to offer below, primarily in the form of two sets of distinctions. The first addresses the concern that groups will unjustly harm those over whom they claim authority. The second addresses the maldistribution of liberty problem as well as the question of how the free exercise of culture should be reshaped to address both of these worries.

There is one final matter: In its blunt form, the claim for a free exercise of culture puts a great deal of weight on the idea of culture and on the idea of living within a culture. That, after all, is the condition upon which the presumptive right to be

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exempt from otherwise valid laws depends. But these are far from stable ideas or conditions, and that fact alone puts the blunt claim in serious doubt. Happily, the prescribed reshaping of the free exercise of culture depends far less critically on either of these concepts.

CHARACTER AND MORAL PROBITY, ETHICS AND MORALITY, EPISTEMIC AND NORMATIVE INVOCATIONS OF CULTURE, EXOGENOUS AND ENDOGENOUS GROUPS

A common form of the claim for a right to free exercise of culture goes like this: There are durable and traditional groups that share a common and distinct web of practices, values, and beliefs. Some of those groups exist within our national borders and are thus vulnerable to our laws. When we—the mainstream "we"—make judgments about practices within these cultural subgroups we often do so in ignorance of the good reasons persons within those groups have for pursuing those practices, because we see them in isolation, out of their rich, complex, and largely alien context. We thus condemn, regulate, and even punish that which we do not understand and hence fail to grasp the value of.

At its core, this is an appealing argument, one that invokes the political virtues of intercultural empathy, ethical humility, and epistemic caution. It is also an argument that is easily overread in support of indefensibly broad cultural license. We can both better preserve the core of this claim for the free exercise of culture and inhibit its tendency to overreach if we observe a number of useful distinctions.

Character and Moral Probity

We can begin with the distinction between character and moral probity. Good people, acting for reasons they perceive to be good reasons, can surely do bad things. Some holders of slaves in some places and times may have genuinely believed that they were doing the best thing for their slaves. Some fathers and mothers in some places and times may genuinely believe that they are doing the best thing for their daughters when they facilitate lives as maternal domestics for those daughters and

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do everything possible to block independent, educated, professional lives for those daughters who want such lives. These holders of slaves, these fathers and mothers, may well be good people: they may be worrying about others and acting on their behalf as they see best; they may even be doing so under circumstances that require substantial sacrifice. But our sympathy or respect addresses the question of character, not the question of what is demanded by justice or morality more broadly. Nothing in this picture should convince us that it is right for people to be held as slaves, or for women to be relegated to something approaching domestic servitude.

What happens when we add the element of cultural separateness to this picture? With cultural separateness comes a substantial increase in the possibility that good people may commit acts that in our studied judgment are bad—bad in the strong sense of unjust or immoral. Or perhaps it is better to put the matter in the obverse: with cultural separateness comes a substantial increase in the possibility that people who commit acts we have reason to regard as bad may nevertheless be good people. But the point remains: we may have reason to think well of people who are moved by culturally endorsed beliefs or traditions to commit acts that we would otherwise condemn, but it does not follow that we should withdraw our condemnation of those acts. Nor is a favorable judgment of character under these circumstances a reason not to try to deter such acts by civil or criminal regulations.

Ethics and Morality

But if character can be redeemed by culture, why not moral probity? Here a second distinction presents itself. There are some matters—for example, some aspects of child-rearing—that connect to things that groups of people understandably value, but that are not necessarily portable between or among groups. Whether or not children sleep with their parents at various ages, whether or not parents spank their children, whether parents encourage independence and free choice or demand strict obedience and narrow conformity, whether parents are open or closed about nudity, encourage or discourage physical touchings of various body parts, etc.—some or all of

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these may be matters of what a group is comfortable with, of how a group thinks people should live, rather than questions of what is morally required. But other matters are not like that: slavery is not like that; the historic treatment of women is in many particulars not like that; the physical or psychological injury of children or the radical foreshortening of their life options is not like that. The vocabulary used to express this distinction is surprisingly unstable. I am familiar with a usage that speaks of a group's local set of values about how it thinks its members should behave as its *ethics,* and judgments about rights and wrongs or goods and evils that apply across groups as propositions about what *morality* requires. But, obviously, it is the distinction rather than the label that matters.

The point of this distinction is simple and rather limited. I simply mean to offer this counsel: in considering claims in the neighborhood of the free exercise of culture, we should not generalize from the observation that some well-settled principles of right or wrong upon reflection turn out to be matters of local, conventional value only, to the mistaken conclusion that all principles of right of wrong are similarly local. I do not mean to suggest that the distinction neatly maps the boundary of the free exercise of culture, with morality-grounded laws binding everyone and ethics-grounded laws binding only members of the dominant group from which the ethical consensus emanates. Matters are more complicated than that. For example, there are some moral delicts that cannot appropriately be reached by law at all, like the behavior of X, who has enjoyed a long-standing friendship with Y, but in a moment of irritation with Y fails to tell him of an opportunity that would have been of enormous professional and economic advantage to him. And there are some matters of social ethics that may be enforced against individuals or members of groups that do not share the ethical sensibilities of the mainstream culture, like prohibitions against public nudity or public displays of sexual intimacy. The line between ethics and morality may have direct consequences for some questions, like whether the state can appropriately intervene in the decisions of parents as to how their children should be disciplined. But even here it is unclear whether cultural separateness enters the picture—it is unclear,

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that is, whether parents' membership in a cultural subgroup that supports their child-rearing approach adds anything to the claim of parents qua parents to autonomy in a broad range of child-rearing decisions. So the distinction between ethics and morality should not be overread as demarcating the boundary of the state's authority with regard to cultural groups. But the distinction remains important in evaluating free exercise of culture claims—important, that is, as a reason to resist the idea that because some social norms are local to their culture of origin all must be.

Epistemic and Normative Invocations of Culture

The child-rearing examples suggest a third distinction: that between epistemic and normative claims of cultural license. Deep-seated attitudes toward things like spanking and physical intimacy may inspire inaccurate, largely unexamined factual beliefs about what is important to the well-being of children and what is not. And there are other reasons to worry about too-quick judgments from outside a dense cultural web about events inside that web. The ramifications, consequences, and indeed the meaning of some acts or gestures may be deeply shaped by the cultural context in which they take place. Well-settled, broadly pursued practices antithetical to those in the mainstream should encourage mainstream observers—especially, perhaps, mainstream lawmakers—to take a hard second look at their factual beliefs and normative judgments before regulating against such culturally endorsed practices. But this is a case for epistemic caution, for being slow to judge. Our initial sense that a particular practice is deeply wrong may well survive a hard second look; when it does, our reasons for discouraging or prohibiting that practice remain.

We might pause for a moment at the suggestion—sometimes made in epistemic terms on behalf of the free exercise of culture—that the salient circumstances most likely to be overlooked by mainstream decisionmakers involve life within the minority culture. The claim is not that our moral judgments should defer to those that prevail inside the minority culture; rather, the point is that if we in the mainstream fully understood the conditions of and prospects for a good life within the

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minority culture, we would understand that our moral commitments are misplaced or deflected with regard to persons whose lives are centered in that culture. Thus, for example, parents of a daughter who choose to limit her education, insist on her acceptance of a life-role of subordinate domestic, or require her to undergo genital modification might defend their action as crucial to their daughter's long-term happiness as wife, mother, and respected member of the community. Or the owner of a restaurant might insist that hiring women or persons of other racial or ethnic backgrounds would be utterly defeating of his enterprise and of its value to his community, because members of his group could never feel comfortable being served food in a restaurant by anyone other than a man who was one of them.

Exogenous and Endogenous Groups

Arguments of this sort themselves turn on a distinction: that between exogenous and endogenous groups. When an anthropologist counsels us in these terms to be slow to judge or condemn the people of a distant culture whose lives she has shared with us, the case for tolerance or acceptance might be relatively strong if we imagine a traditional, insular culture, comparatively resistant to outside intercourse. But when the argument is made on behalf of behavior in a group that is settled within our national boundaries, we have reasons to embrace it with care, if at all. Now questions of choice, consent, and exit push to the fore: we do not assume that the daughter will choose to live her life wholly within the confines of the group to which her parents feel allegiance, and we surely do not welcome decisions made on her behalf that substantially constrain her options to do otherwise. The parents' claim as to what is best for their daughter assumes a foreshortening of the range of the daughter's choices, a foreshortening that we have reason to worry the daughter has not chosen for herself. And the restaurant example should have unhappy associations for anyone who is familiar with our national history of discrimination in public accommodations. There is no doubt that associational and egalitarian values can conflict in civil-rights legislation. But we have made a strong commitment to equality, choosing on moral grounds to insist that the eradication of

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caste is prior to the integrity of group values or associational choice even in relatively small employment settings. In the restaurant example, the cultural claims of a tightly knit immigrant group do not in any obvious way sound a different note than those of the white citizens of Selma, Alabama, circa 1964.

PROTECTION AND PRIVILEGE, INCLUSION AND EXEMPTION, GENERAL AND SELECTIVE CLAIMS OF LIBERTY

This last point, about the connection between contemporary calls for the free exercise of culture and the emphatic rejection of comparable claims in other settings, introduces the concern that a right to the free exercise of culture would indefensibly privilege people motivated by the forces of culture over other people in the grip of other powerful life forces. The latter might be, for example, deeply moral and attached to the plight of the poor and the hungry, or abidingly devoted to the welfare of their families, or wrapped in the heat of artistic creation, or, for that matter, consumed with their own medical infirmities. Why do the pressures of cultural membership carry a distinct and privileged charge?

It will not do to answer this challenge by referring to the comparable privilege enjoyed by religiously motivated people. An important ground of our earlier discussion about the need to reshape and rehabilitate the free exercise of religion was the impossibility of justifying the privileging of religious commitments. Constitutional law has come to recognize this problem and has emphatically retreated from the privileging view of religious liberty. But we do well to remember the free exercise of religion at this point. The problem with privileging culture over other motivational forces becomes clear if we reshape the pairs of cases that we considered earlier:

- Two women wish to open soup kitchens in their homes, which are in residence-only zones. Both are deeply committed to relieving the suffering of the poor, but only one considers her commitment to derive from the precepts of her culture.
- Two sets of parents wish to homeschool their children, and face legal obstacles. Both couples are moved by concern for

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the moral and cognitive development of their children, but only one couple is guided in this respect by principles embedded in their culture.

- Two same-sex couples wish to be married. Both couples are deeply in love and committed to a shared life; but only one is prompted by their culture to marry within their gender.

Protection and Privilege

The free exercise of culture need not privilege culture over other life circumstances. There are two distinct judgmental stances in our constitutional tradition. In the area of free expression, for example, we view speech as *privileged,* and privileged to a high degree. A claimant who locates her behavior within the core of protected speech activity acquires the privilege of substantial immunity from the reach of governmental authority, even if her speech increases the likelihood that injuries to the property or persons of others may take place. She may speak in a fashion that is itself injurious to others. She may even and especially speak in a fashion that is injurious to the public interest as it is presently conceived. In contrast, while African-Americans are singled out for special and beneficial constitutional attention, they are not privileged but *protected.* An African-American equal protection claimant insists on parity, not advantage: she demands that the state behave in a fashion fully consistent with her status as an equal citizen, as opposed to treating her as a member of a subordinate class who by virtue of that membership does not enjoy the same concern and respect. The difference in these judgmental stances originates in the underlying nature of constitutional concern: privilege flows from the perception of virtue or conceptual precedence; protection from the perception of vulnerability to discrimination. The privileging of religion over other important human commitments is normatively indefensible and practically unworkable; so too is the privileging of culture. The free exercise of culture, like the free exercise of religion, can be made normatively appealing and tractable only if understood as calling for protection rather than privilege.

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Inclusion and Exemption

Some sense of the direction that the free exercise of culture will take if understood as protecting minority cultures from discrimination rather than privileging them is afforded by considering two possible sorts of claims that a criminal defendant might make based on the cultural predicate of his behavior. Let us imagine a member of an immigrant community who kills someone. He argues that he acted under circumstances that constituted extreme provocation for persons who, like himself, are steeped in the values and traditions of his community. Now, imagine two different sorts of claims that might be thought to flow from this "cultural defense." One argues that the provocation under which the defendant acted should qualify for mitigation of criminal liability or penalty under extant legal doctrine, notwithstanding the culturally specific nature of the provocation. For example, persons who act in the heat of passion may only be guilty of second-degree murder in the jurisdiction in question. We can speak of this as a claim for *inclusion* within available, more general, legal categories. Another sort of claim is for a freestanding permission to commit what would otherwise be a serious criminal act absent any available doctrine of excuse or mitigation. This is a claim for *exemption* from otherwise valid general laws. By their nature, claims for inclusion are likely to be epistemic rather than normative in the sense in which we used those terms above; more to the immediate point, they are likely to be offered from the stance of protection rather than privilege. In contrast, claims for exemption are likely to be normative rather than merely epistemic, and are likely as well to be offered from the stance of privilege. For just these reasons, claims of inclusion are much to be preferred.

General and Selective Claims of Liberty

This preference for claims of parity over those of advantage can be extended to embrace one last distinction, that between general and selective claims of liberty. General claims of liberty are claims of constitutional right of the sort with which we are familiar; they are in principle available to all, and they assume

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forms like "The state may not intrude into the decisions of people with regard to X," or "The state may not regulate speech on grounds of Y." Selective claims of liberty assume the form "Persons motivated by Z are entitled. . ." General claims of liberty have the great advantage of offering the benefit of constitutional justice on equal terms; they ought on just those grounds to be preferred. And while in principle available to all, general claims of liberty serve best the interests of those whose enterprises bring them into conflict with the norms of social majorities; a robust regime of general liberty is thus the best possible environment for religious and cultural minorities. The protection of speech and belief and the rights of parents to choose among educational options for their children will inevitably accrue most to the advantage of those whose speech is an irritant, whose beliefs are foreign, whose ambitions for their children do not conform to prevailing views.

THE FREE EXERCISE OF CULTURE RECONSIDERED

There is a common thread running through the choice of epistemic over normative invocations of culture, protection over privilege, inclusion over exemption, and general over selective claims of liberty. The governing idea is the use of settled and generally applicable judgments—from the domains of social consensus, constitutional law, statutory enactment, and judicially developed common law—as the baseline against which the rights of cultural minorities are to be assessed. Epistemic concerns and the principle of equal liberty counsel that we be slow to judge the unfamiliar, that we take a hard second look at our own factual beliefs and normative judgments before we condemn culturally endorsed practices. So, too, they counsel that extant legal categories of excuse and mitigation not be closed to the distinct experience of cultural minorities. And finally, of course, they require that our robust tradition of constitutional liberty—including the rights of speech and belief, the right of parents to guide the development of their children, and the right of people to be free from governmental intrusion into decisions that ought to be theirs alone—be available on full and fair terms to cultural minorities. What they do not counsel or require is the

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privileging of the pressures and commitments of culture over other abiding human interests, projects, and commitments. Throughout, the goal is parity and the implicit metric is that of extant commitments and provisions.

As a regime of liberty premised on protection rather than privilege, the free exercise of culture would enjoy three important advantages. First, the benchmarks of this approach are settled judgments about the competing and conflicting claims that beset any effort to delineate the scope of individual and group choice in a modern political community; the risk of licensing immoral or unjust behavior in the name of culture is accordingly abated. Second, this approach aims at parity rather than special advantage and avoids the normative objection that cultural impulses are being indefensibly advantaged over other important human concerns.

And third, this approach substantially reduces an additional set of concerns that we have not yet addressed. Increasingly, it has become clear to anthropologists and others that the idea of living within a culture, as a discrete condition characterized by irresistible adherence to fixed norms, is highly problematic at best, and precariously wrong at worst.[5] Certainly, in the case of the groups that concern us most in this context—immigrant groups, transplanted from their place of origin and now situated in the midst of a large and highly diverse political community with powerful forces that conduce to some degree of assimilation—this vision of culture as monolithic and all-consuming is likely to be a badly distorted understanding. The members of such groups are likely to be members of a number of cross-cutting groups, people whose allegiance to any one group is incomplete, complex, and possibly evanescent. But the privileging view of the free exercise of culture requires a monolithic, binary judgment: if you are in the grip of culture in the right way, you are entitled to respond to its commands, even at the cost of violating laws that would otherwise bind you; if you are not so situated, you are relegated to the status of an ordinary member of our political community and obliged to obey its laws. An approach to the members of cultural groups that offers them special prerogatives only if they fulfill the condi-

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tions of an essentially mythic idea of what it means to belong to a culture is almost certainly doomed to failure on these grounds alone. In contrast, an approach that works to see that the members of minority, nonconforming groups enjoy the benefit of legal perquisites that are in principle available to all is far less dependent on the idea of cultural imperatives. The call for epistemic caution can be generously applied to all cultural groups that underwrite nonconforming practices, notwithstanding the possibility that those practices may be to some degree contested within any given group. Eligibility for extant categories of excuse or mitigation can be determined on the basis of the individual implicated event and its connection to cultural traditions—a far more narrow and tractable inquiry. And, for these purposes at least, the application of general principles of liberty to cultural minorities is comparatively unproblematic.

Once rebuilt as an antidiscrimination principle, as a principle of parity rather than advantage, the free exercise of culture should have powerful appeal for a political community committed to liberty and fairness. What that principle so understood inspires is a combination of caution, empathy, and evenhandedness. These are political virtues that should require no defense.

ACKNOWLEDGMENTS

This essay owes its existence and any positive features it may possess to the provocation and edification I have enjoyed as a member of the working group on Ethnic Customs, Assimilation, and American Law. I owe all the members of the group a debt of gratitude. In particular, I would like to thank Richard Shweder, who has modeled academic inquiry and social engagement for us all.

ENDNOTES

[1]The following observations about the free exercise of religion draw heavily on themes that my colleague Christopher Eisgruber and I have explored at greater length in several essays. We first developed our general views in Christopher L. Eisgruber and Lawrence G. Sager, "The Vulnerability of Conscience: The Constitutional Basis for Protecting Religious Conduct," *University of Chicago Law Review* 61 (1245) (1994). We have continued to elaborate our ideas in subsequent work; see, e.g., Eisgruber and Sager, "Equal Regard," in

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Stephen Feldman, ed., *Law and Religion: A Critical Anthology* (forthcoming, New York University Press), and Eisgruber and Sager, "Congressional Power and Religious Liberty After *City of Boerne* v. *Flores*," 1997 S. Ct. Rev. 79 (1997).

[2]*Wisconsin* v. *Yoder*, 406 US 205 (1972).

[3]*Yoder* is offered here as evidence of the intuitive force of cultural concerns, not as a laudable instance of the judicial protection of religious liberty. *Yoder* would have been a sound decision only if: a) it were predicated upon a more general right of parents to make reasonable choices about the developmental regimes to which their children will be subject; or b) Wisconsin were to have offered some parents the sort of choice it was withholding from Amish parents.

[4]In *Lyng* v. *Northwest Indian Cemetery Protective Ass'n*, 485 US 439 (1988), the Bureau of Land Management had decided to build a road through land deemed sacred by a Native American religion, threatening to cripple the religious group's ability to practice their faith. The Supreme Court rejected a free exercise challenge to the bureau's decision; Congress responded by refusing to fund the road until it was relocated. In *Employment Division, Department of Human Resources of Oregon* v. *Smith*, 494 US 872 (1990), the Supreme Court held that members of the Native American Church were not constitutionally entitled to ingest peyote as part of their religion's sacrament. Congress responded with a small blizzard of legislation aimed at protecting the church members' right to ingest peyote, including the Religious Freedom Restoration Act.

[5]This point was brought home to me by its forceful presentation in Caroline Bledsoe and Jane Maslow Cohen, "Immigrants, Agency and Allegiance: Some Conundra from Anthropology and from Law," in *The Free Exercise of Culture: How Free Is It? How Free Ought It To Be?* ed. Richard Shweder, Martha Minow, and Hazel Markus (forthcoming, Russell Sage Foundation).

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Richard A. Shweder

What About "Female Genital Mutilation"? And Why Understanding Culture Matters in the First Place

Female genital mutilation (FGM, also known as female circumcision) has been practiced traditionally for centuries in sub-Saharan Africa. Customs, rituals, myths, and taboos have perpetuated the practice even though it has maimed or killed untold numbers of women and girls. . . . FGM's disastrous health effects, combined with the social injustices it perpetuates, constitute a serious barrier to overall African development.

—Susan Rich and Stephanie Joyce[1]

On the basis of the vast literature on the harmful effects of genital surgeries, one might have anticipated finding a wealth of studies that document considerable increases in mortality and morbidity. This review could find no incontrovertible evidence on mortality, and the rate of medical complications suggests that they are the exception rather than the rule.

—Carla M. Obermeyer[2]

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This essay is part of a forthcoming volume, The Free Exercise of Culture, *edited by R. Shweder, M. Minow, and H. Markus.* *© Russell Sage Foundation. All rights reserved.*

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Early societies in Africa established strong controls over the sexual behavior of their women and devised the brutal means of circumcision to curb female sexual desire and response.

—Olayinka Koso-Thomas[3]

. . . studies that systematically investigate the sexual feelings of women and men in societies where genital surgeries are found are rare, and the scant information that is available calls into question the assertion that female genital surgeries are fundamentally antithetical to women's sexuality and incompatible with sexual enjoyment.

—Carla M. Obermeyer[4]

Those who practice some of the most controversial of such customs—clitoridectomy, polygamy, the marriage of children or marriages that are otherwise coerced—sometimes explicitly defend them as necessary for controlling women and openly acknowledge that the customs persist at men's insistence.

—Susan M. Okin[5]

It is difficult for me—considering the number of ceremonies I have observed, including my own—to accept that what appear to be expressions of joy and ecstatic celebrations of womanhood in actuality disguise hidden experiences of coercion and subjugation. Indeed, I offer that the bulk of Kono women who uphold these rituals do so because they want *to—they relish the supernatural powers of their ritual leaders over against men in society, and they brace the legitimacy of female authority and, particularly, the authority of their mothers and grandmothers.*

—Fuambai Ahmadu[6]

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BY RITES A WOMAN: LISTENING TO THE MULTICULTURAL VOICES OF FEMINISM

ON NOVEMBER 18, 1999, Fuambai Ahmadu, a young African scholar who grew up in the United States, delivered a paper at the American Anthropological Association meeting in Chicago that should be deeply troubling to all liberal freethinking people who value democratic pluralism and the toleration of "differences" and who care about the accuracy of cultural representations in our public-policy debates.

Ahmadu began her paper with these words:

> I also share with feminist scholars and activists campaigning against the practice [of female circumcision] a concern for women's physical, psychological and sexual well-being, as well as for the implications of these traditional rituals for women's status and power in society. Coming from an ethnic group [the Kono of Eastern Sierra Leone] in which female (and male) initiation and "circumcision" are institutionalized and a central feature of culture and society and having myself undergone this traditional process of becoming a "woman," I find it increasingly challenging to reconcile my own experiences with prevailing global discourses on female "circumcision."[7]

Coming-of-age ceremonies and gender-identity ceremonies involving genital alterations are embraced by, and deeply embedded in the lives of, many African women, not only in Africa but in Europe and the United States as well. Estimates of the number of contemporary African women who participate in these practices vary widely and wildly between eighty million and two hundred million. In general, these women keep their secrets secret. They have not been inclined to expose the most intimate parts of their bodies to public examination and they have not been in the habit of making their case on the op-ed pages of American newspapers, in the halls of Congress, or at academic meetings. So it was an extraordinary event to witness Fuambai Ahmadu, an initiate and an anthropologist, stand up and state that the oft-repeated claims "regarding adverse effects [of female circumcision] on women's sexuality do not tally with the experiences of most Kono women," including her own.[8] Ahmadu was twenty-two years old and sexually experi-

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enced when she returned to Sierra Leone to be circumcised, so at least in her own case she knows what she is talking about. Most Kono women uphold the practice of female (and male) circumcision and positively evaluate its consequences for their psychological, social, spiritual, and physical well-being. Ahmadu went on to suggest that Kono girls and women feel empowered by the initiation ceremony (see quotation, above) and she described some of the reasons why.

Ahmadu's ethnographic observations and personal testimony may seem astonishing to readers of *Dædalus*. In the social and intellectual circles in which most Americans travel it has been so "politically correct" to deplore female circumcision that the alarming claims and representations of anti-"FGM" advocacy groups (images of African parents routinely and for hundreds of years disfiguring, maiming, and murdering their female children and depriving them of their capacity for a sexual response) have not been carefully scrutinized with regard to reliable evidence. Nor have they been cross-examined by freethinking minds through a process of systematic rebuttal. Quite the contrary; the facts on the ground and the correct moral attitude for "good guys" have been taken to be so self-evident that merely posing the rhetorical question "what about FGM?" is presumed to function as an obvious counterargument to cultural pluralism and to define a clear limit to any feelings of tolerance for alternative ways of life. This is unfortunate, because in this case there is good reason to believe that the case is far less one-sided than supposed, that the "bad guys" are not really all that bad, that the values of pluralism should be upheld, and that the "good guys" may have rushed to judgment and gotten an awful lot rather wrong.

Six months before Fuambai Ahmadu publicly expressed her doubts about the prevailing global discourse on female circumcision, readers of the *Medical Anthropology Quarterly* observed an extraordinary event of a similar yet (methodologically) different sort. Carla Obermeyer, a medical anthropologist and epidemiologist at Harvard University, published a comprehensive review of the existing medical literature on female genital surgeries in Africa, in which she concluded that

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the claims of the anti-"FGM" movement are highly exaggerated and may not match reality.

Obermeyer began her essay by pointing out that "The exhaustive review of the literature on which this article is based was motivated by what appeared as a potential disparity between the mobilization of resources toward activism and the research base that ought to support such efforts."[9] When she took a closer look at that "research base" (a total of 435 articles were reviewed from the medical, demographic, and social science literatures, including every published article available on the topic of "female circumcision" or "female genital mutilation" in the Medline, Popline, and Sociofile databases), she discovered that in most publications in which statements were made about the devastating effects of female circumcision no evidence was presented at all. When she examined research reports actually containing original evidence she discovered numerous methodological flaws (e.g., small or unrepresentative samples, no control groups) and quality-control problems (e.g., vague descriptions of medical complications) in some of the most widely cited documents. She remarks: "Despite their deficiencies, some of the published reports have come to acquire an aura of dependability through repeated and uncritical citations."[10]

In order to draw some realistic, even if tentative, conclusions about the health consequences of female circumcision in Africa, Obermeyer then introduced some standard epidemiological quality-control criteria for evaluating evidence.[11] For example, a research study would be excluded if its sampling methods were not described or if its claims were based on a single case rather than a population sample. On the basis of the relatively small number of available studies that actually passed minimum scientific standards (for example, eight studies on the topic of medical complications), Obermeyer reported that the widely publicized medical complications of African genital operations are the exception, not the rule; that female genital alterations are not incompatible with sexual enjoyment; and that the claim that untold numbers of girls and women have been killed as a result of this "traditional practice" is not well supported by the evidence.[12]

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Many anthropologists and other researchers who work on this topic in various field settings in Africa have been aware of discrepancies between the global discourse on female circumcision (with its images of maiming, murder, sexual dysfunction, mutilation, coercion, and oppression) and their own ethnographic experiences with indigenous discourses and physical realities.[13]

Perhaps the first anthropological protest against the global discourse came in 1938 from Jomo Kenyatta, who, prior to becoming the first president of postcolonial Kenya, wrote a Ph.D. thesis in anthropology at the London School of Economics. His thesis was published as a book entitled *Facing Mount Kenya: The Tribal Life of the Gikuyu*, in which he described both the customary premarital sexual practices of the Gikuyu (lots of fondling and rather liberal attitudes toward adolescent petting and sexual arousal) and the practice of female (and male) circumcision.

Kenyatta's words, published in 1938, have an uncanny contemporary ring and relevance. First he informs us that "In 1931 a conference on African children was held in Geneva under the auspices of the Save the Children Fund. In this conference several European delegates urged that the time was ripe when this 'barbarous custom' should be abolished, and that, like all other 'heathen' customs, it should be abolished at once by law."[14]

He goes on to argue that among the Gikuyu a genital alteration, "like Jewish circumcision," is a bodily sign that is regarded "as the *conditio sine qua non* of the whole teaching of tribal law, religion and morality," that no proper Gikuyu man or woman would have sex with or marry someone who was not circumcised, that the practice is an essential step into responsible adulthood for many African girls and boys, and that "there is a strong community of educated Gikuyu opinion in defense of this custom."[15]

Nearly sixty years later echoes of Jomo Kenyatta's message can be found in the writings of Corinne Kratz, who has written a detailed account of female initiation in another ethnic group in Kenya, the Okiek. The Okiek, she tells us, do not talk about

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circumcision in terms of the dampening of sexual pleasure or desire, but rather speak of it "in terms of cleanliness, beauty and adulthood." According to Kratz, Okiek women and men view "genital modification and the bravery and self-control displayed during the operation as constitutive experiences of Okiek personhood."[16]

Many other examples could be cited of discrepancies between the global discourse and the experience of many field researchers in Africa. With regard to the issue of sexual enjoyment, for example, Robert Edgerton remarks that "Kikuyu men and women, like those of several other East African societies that practice female circumcision, assured me in 1961–62 that circumcised women continue to be orgasmic," and similar remarks appear in other field reports.[17]

With regard to the global discourse that represents circumcision as a disfigurement or a "mutilation," Sandra Lane and Robert Rubinstein have offered the following caution:

> An important caveat, however, is that many members of societies that practice traditional female genital surgeries do not view the result as mutilation. Among these groups, in fact, the resulting appearance is considered an improvement over female genitalia in their natural state. Indeed, to call a woman uncircumcised, or to call a man the son of an uncircumcised mother, is a terrible insult and noncircumcised adult female genitalia are often considered disgusting. In interviews we conducted in rural and urban Egypt and in studies conducted by faculty of the High Institute of Nursing, Zagazig University, Egypt, the overwhelming majority of circumcised women planned to have the procedure performed on their daughters. In discussions with some fifty women we found only two who resent and are angry at having been circumcised. Even these women do not think that female circumcision is one of the most critical problems facing Egyptian women and girls. In the rural Egyptian hamlet where we have conducted fieldwork some women were not familiar with groups that did not circumcise their girls. When they learned that the female researcher was not circumcised their response was disgust mixed with joking laughter. They wondered how she could have thus gotten married and questioned how her mother could have neglected such an important part of her preparation for womanhood.[18]

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These ethnographic reports are noteworthy because they suggest that instead of assuming that our own perceptions of beauty and disfigurement are universal and must be transcendental we might want to consider the possibility that there is a real and astonishing cultural divide around the world in moral, emotional, and aesthetic reactions to female genital surgeries. There is, of course, no doubt that our own personal feelings of disgust and anxiety about this topic are powerful and can be easily aroused and rhetorically manipulated either with pictures (for example, of Third World surgical implements) or with words (for example, labeling the activity "torture" or "mutilation"). But if we want to understand the true character of this cultural divide in sensibilities it may make good sense to bracket our own initial (and automatic) emotional/visceral reactions and to save any powerful conclusive feelings for the end of the argument, rather than have them color or short-circuit all objective analysis. Perhaps, instead of simply deploring the "savages," we might develop a better understanding of the subject by constructing a synoptic account of the inside point of view, from the perspective of those many African women for whom such practices seem both normal and desirable.

MORAL PLURALISM AND THE "MUTUAL YUCK RESPONSE"

People recoil at each other's practices and say "yuck" at each other all over the world. When it comes to female genital alterations, however, the "mutual yuck" response is particularly intense and may even approach a sense of mutual outrage or horror. From a purely descriptive point of view, that particular type of modification of the "natural" body is routine and normal in many ethnic groups. For example, national prevalence rates of 80–98 percent have been reported for Egypt, Ethiopia, the Gambia, Mali, Sierra Leone, Somalia, and the Sudan.[19] In African nations where the overall prevalence rate is lower—for example, 50 percent in Kenya, 43 percent in Cote d'Ivoire, 30 percent in Ghana—this is typically because some ethnic groups in those countries have a tradition of female circumcision while other ethnic groups do not. For example, within Ghana the ethnic groups in the north and the east

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circumcise girls (and boys), while the ethnic groups in the south have no tradition of female circumcision. In general, for both boys and girls the best predictor of circumcision (versus the absence of it) is ethnicity or cultural group affiliation. For example, circumcision is customary for the Kono of Sierra Leone, but for the Wolof of Senegal it is not. For women within these groups, one key factor—their cultural affiliation—trumps other predictors of behavior, such as educational level or socioeconomic status. Among the Kono, even women with a secondary-school or college education are circumcised, while Senegalese Wolof women—including the illiterate and unschooled—are not.

There are other notable facts about this cultural practice. For one thing, most African women do not think about circumcision in human-rights terms. Women who endorse female circumcision typically argue that it is an important part of their cultural heritage or their religion, while women who do not endorse the practice typically argue that it is not permitted by their cultural heritage or their religion.[20]

Second, among members of ethnic groups for whom female circumcision is part of their cultural heritage approval ratings for the custom are generally rather high. According to the Sudan Demographic and Health Survey of 1989–1990, which was conducted in northern and central Sudan, out of 3,805 women interviewed 89 percent were circumcised. Of the women who were circumcised, 96 percent said they had circumcised or would circumcise their daughters. When asked whether they favored continuation of the practice, 90 percent of circumcised women said they favored its continuation.[21]

In Sierra Leone the picture is much the same, and the vast majority of women are sympathetic to the practice. Even Olayinka Koso-Thomas, an anti-"FGM" activist, makes note of the high degree of support for genital operations, although she expresses herself with a rather patronizing voice and in imperial tones. "Most African women," Koso-Thomas observes, "still have not developed the sensitivity to feel deprived or to see in many cultural practices a violation of their human rights. The consequence of this is that, in the mid-80s, when most women in Africa have voting rights and can influence political decisions against practices harmful to their health, they continue to up-

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hold the dictates and mores of the communities in which they live; they seem in fact to regard traditional beliefs as inviolate."[22] When it comes to maintaining their coming-of-age and gender-identity ceremonies, Koso-Thomas does not like the way many African women vote. She thinks she is enlightened about human rights and health and that they remain in the dark. But she does recognize that, despite her censure, most women in Sierra Leone endorse the practice of circumcision.

Third, although ethnic group affiliation is the best predictor of who circumcises and who does not, the timing and form of the operation are not consistent across groups. Thus, there is enormous variability in the age at which the surgery is normally performed (any time from birth to the late teenage years). There is also enormous variability in the traditional style and degree of surgery (from a cut in the prepuce covering the clitoris to the complete "smoothing out" of the genital area by removing all visible parts of the clitoris and most if not all of the labia). In some ethnic groups (for example, in Somalia and the Sudan) the "smoothing out" operation is concluded by stitching closed the vaginal opening, with the aim of enhancing fertility and protecting the womb.[23] The latter procedure, often referred to as "infibulation" or Pharaonic circumcision, is not typical in most circumcising ethnic groups, although it has received a good deal of attention in the anti-"FGM" literature. It is estimated that it occurs in about 15 percent of all African cases.

In places where the practice of female circumcision is popular, including Somalia and the Sudan, it is widely believed by women that these genital alterations improve their bodies and make them more beautiful, more feminine, more civilized, more honorable.

- More beautiful because the body is made smooth and a protrusion or "fleshy encumbrance" is removed that is thought to be ugly and odious to both sight and touch.[24] There is a cultural aesthetics in play among circumcising ethnic groups, an ideal of the human sexual region as smooth, cleansed, and refined, which supports the view that the genitals of both women and men are unsightly, misshapen, and rather unappealing if left in their "natural" state.

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- More feminine because unmodified genitals (in both males and females) are seen as sexually ambiguous. From a female's perspective the clitoris is viewed as an unwelcome vestige of the male organ, and its removal is positively associated with several good things: the attainment of full female identity, induction into a social network and support group of powerful adult women, and ultimately marriage and motherhood.[25] Many women who uphold these traditions of female initiation seek to empower themselves by getting rid of what they perceive as an unbidden and dispensable trace of unwanted male anatomy.
- More civilized because a genital alteration is a symbolic action that says something about one's willingness to exercise restraint over feelings of lust and self-control over the antisocial desire for sexual pleasure.
- More honorable because the surgery announces one's commitment to perpetuate the lineage and value the womb as the source of social reproduction.[26]

As hard as it may be for "us" to believe, in places where female circumcision is commonplace it is not only popular but fashionable. As hard as it may be for "us" to believe (and I recognize that for some of "us" this is really hard to believe), many women in places such as Mali, Somalia, Egypt, Kenya, and Chad are repulsed by the idea of unmodified female genitals. They view unmodified genitals as ugly, unrefined, and undignified, and hence not fully human. They associate unmodified genitals with life outside of or at the bottom of civilized society. "Yuck," they think to themselves; "what kind of barbarians are these who don't circumcise their genitals?"

The "yuck" is, of course, mutual. Female genital alterations are not routine and normal for members of mainstream or majority populations in Europe, the United States, China, Japan, and other parts of the world, including South Africa. For members of those cultures the very thought of female genital surgery produces an unpleasant visceral reaction; although it should be noted that for many of us the detailed visualization of any kind of surgery—a bypass operation, an abortion, a sex change operation, a breast implantation, a face lift, or even a

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decorative eyebrow or tongue piercing—produces an unpleasant visceral reaction. In other words, merely contemplating a surgery, especially on the face or the genitals, can be quite upsetting or revolting, even when the surgery seems fully justified from our own "native point of view."

In the United States and Europe the practice of genital surgery has been disparaged as "mutilation."[27] It has been redescribed as rape or torture and associated with the nightmare of some brutal patriarchal male (or perhaps a Victorian gynecologist) grabbing a young woman or girl, pulling her into the back room screaming and kicking, and using a knife or razor blade to deprive her of her sexuality. Various dramatic and disturbing claims have been made about the health hazards and harmful side effects of African genital operations, including the loss of a capacity to experience sexual pleasure.

Saying "yuck" to the practice has become a symbol of opposition to the oppression of women and of one's support for their emancipation around the world. Eliminating the practice has become a high-priority mission for many Western feminists (and for some human-rights activists in Africa, who, understandably enough, often, although not invariably, come from noncircumcising ethnic groups) and for some international health and human-rights organizations (for example, the World Health Organization, Amnesty International, and Equality Now).

Outside of Africa, especially in the United States and Europe, opposition to female circumcision has become so "politically correct" that until very recently most *anti*-anti-"FGM" criticism has been defensive, superficial, or sympathetic. The sympathetic criticisms are mainly critiques of counterproductive "eradication" tactics. They provide advice on how to be more effective as an anti-"FGM" activist.[28]

There have also been occasional complaints that anti-"FGM" campaigns displace attention and divert resources from battles against social injustice in the United States and Europe.[29] And there have been expressions of concern about the anguished state of mind of African children living in the United States who are told by the media and by social-service agencies that their own mother is "mutilated" and that she is potentially dangerous to them too.[30]

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But these types of criticisms do not go very deep. In general, the purported facts about female circumcision go unquestioned, the moral implications of the case are thought to be obvious, and the mere query "what about FGM?" is presumed to function in and of itself as a knock-down argument against both cultural pluralism and any inclination toward tolerance.[31]

SO WHAT ABOUT FGM?

So what about "FGM"? I shall treat this as a real question deserving a considered response rather than as a rhetorical query intended to terminate all debate. For starters, the practice of genital alteration is a rather poor example of gender inequality or of society picking on women. Surveying the world, one finds very few cultures, if any, in which genital surgeries are performed on girls but not boys, although there are many cultures in which they are performed only on boys or on both sexes. The male genital alterations often take place in adolescence and they can involve major modifications (including subincision, in which the penis is split along the line of the urethra). Considering the prevalence, timing, and intensity of the relevant initiation rites, and viewing genital alteration on a worldwide scale, one is hard pressed to argue that it is an obvious instance of a gender inequity disfavoring girls. Quite the contrary; social recognition of the ritual transformation of both boys and girls into a more mature status as empowered men and women is not infrequently a major point of the ceremony. In other words, female circumcision, when and where it occurs in Africa, is much more a case of society treating boys and girls equally before the common law and inducting them into responsible adulthood in parallel ways.

The practice is also a rather poor example of patriarchal domination. Many patriarchal cultures in Europe and Asia do not engage in genital alterations at all or (as in the case of Jews, many non-African Muslims, and many African ethnic groups) exclude girls from participation in this valued practice and do it only to boys. Moreover, the African ethnic groups that circumcise females (and males) are very different from each other in kinship, religion, economy, family life, ceremonial practice,

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and so forth. Some are Islamic, some are not. Some are patriarchal, some (such as the Kono, a matrilineal society) are not. Some have formal initiations into well-established women's organizations, some do not.[32] Some care a lot about female purity, sexual restraint outside of marriage, and the social regulation of desire, but others (such as the Gikuyu) are more relaxed about premarital sexual play and are not puritanical. And when it comes to female initiation and genital alterations the practice is almost always controlled, performed, and most strongly upheld by women, although male kin often do provide material and moral support. Typically, however, men have rather little to do with these female operations, may not know very much about them, and may feel it is not really their business to interfere or to try to tell their wives, mothers, aunts, and grandmothers what to do. It is the women of the society who are the cultural experts in this intimate feminine domain, and they are not particularly inclined to give up their powers or share their secrets.

In those cases of female genital alteration with which I am most familiar (I have lived and taught in Kenya, where the practice is routine for some ethnic groups), the adolescent girls who undergo the ritual initiation look forward to it.[33] It is an ordeal and it can be painful (especially if done "naturally" without anesthesia), but it is viewed as a test of courage. It is an event organized and controlled by women, who have their own view of the aesthetics of the body—a different view from ours about what is civilized, dignified, and beautiful. The girl's parents are not trying to be cruel to their daughter—African parents love their children too. No one is raped or tortured. There is a celebration surrounding the event.

What about the devastating negative effects on health and sexuality that are vividly portrayed in the anti-"FGM" literature? When it comes to hard-nosed scientific investigations of the consequences of female genital surgeries on sexuality and health, there are relatively few methodologically sound studies. As Obermeyer discovered in her medical review, most of the published literature is "data-free" or else relies on sensational testimonials, secondhand reports, or inadequate samples. Judged against basic epidemiological research standards, much of the

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published empirical evidence, including some of the most widely cited publications in the anti-"FGM" advocacy literature (including the influential *Hosken Report*[34]), are fatally flawed.[35] Nevertheless, there is some science worth considering in thinking about female circumcision, which leads Obermeyer to conclude that the global discourse about the health and sexual consequences of the practice is not sufficiently supplied with credible evidence.

The anti-"FGM" advocacy literature typically features long lists of short-term and long-term medical complications of circumcision, including blood loss, shock, acute infection, menstrual problems, childbearing difficulties, incontinence, sterility, and death. These lists read like the warning pamphlets that accompany many prescription drugs, which enumerate every claimed negative side effect of the medicine that has ever been reported (no matter how infrequently). They are very scary to read, and they are very misleading. Scary-looking, stomach-churning, anxiety-provoking lists of possible medical complications aside, Obermeyer's comprehensive review of the literature on the actual frequency and risk of medical complications following genital surgery in Africa suggests that medical complications are the exception, not the rule; that African children do not die because they have been circumcised (they die from malnutrition, war, and disease, not because of coming-of-age ceremonies); and that the experience of sexual pleasure is compatible with the genital aesthetics and related practices of circumcising groups.

Her findings are basically consistent with Robert Edgerton's comments about female circumcision among the Gikuyu in the Kenya of the 1920s and 1930s, when Western missionaries first launched their own version of "FGM eradication programs." As Edgerton remarks, the operation was performed without anesthesia and hence was very painful, "yet most girls bore it bravely and few suffered serious infection or injury as a result. Circumcised women did not lose their ability to enjoy sexual relations, nor was their child-bearing capacity diminished. Nevertheless the practice offended Christian sensibilities."[36]

In other words, the alarmist claims that are a standard feature of the anti-"FGM" advocacy literature that African tradi-

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tions of circumcision have "maimed or killed untold numbers of women and girls"[37] and deprived them of their sexuality may not be true. Given the most reliable, even if limited, scientific evidence at hand, those claims should be viewed with skepticism and not accepted as fact, no matter how many times they are uncritically recapitulated on the editorial pages of the *New York Times* or poignantly invoked in a journalistic essay on PBS.

If genital alteration in Africa really were a long-standing cultural practice in which parents, oblivious to intolerably high risks, disabled and murdered their preadolescent and adolescent children, there would be good reason to wish for its quick end. Obermeyer's review suggests that this characterization of the practice may be as fanciful as it is nightmarish, or, at the very least, is dubious and misleading. Given the importance of accurate information in public-policy debates about cultural diversity in liberal democracies, it is time for the anti-"FGM" advocacy groups, who seem to have taken the place of yesterday's Christian missionaries, either to revise the "factoids" they distribute to the public, or else to substantiate their claims with rigorously collected data.

The real facts, I would suggest, are quite otherwise. With regard to the consequences of genital surgeries, the weight of the evidence suggests that the overwhelming majority of youthful female initiates in countries such as Mali, Kenya, and Sierra Leone believe they have been improved (physically, socially, and spiritually) by the ceremonial ordeal and symbolic process (including the pain) associated with initiation. The evidence indicates that most of these youthful initiates manage to be (in their own estimation) "improved" without disastrous or even major short-term or long-term consequences for their health.

This is not to say that we should not worry about the documented 4–16 percent urinary infection rate associated with these surgeries, or the 7–13 percent of cases in which there is excessive bleeding, or the 1 percent rate of septicemia.[38] The reaction of many people to unsafe abortions, however, is not to get rid of abortions. Perhaps some antiabortion groups might be tempted by the argument that because some abortions are unsafe, there should be no abortions at all. However, a far

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more reasonable reaction to unsafe abortions is to make them safe. Why not the same reaction in the case of female genital alterations? Infections and other medical complications that arise from unsanitary surgical procedures or malpractice can be corrected without depriving "others" of a rite of passage and system of meaning central to their cultural and personal identities and their overall sense of well-being. What I do want to suggest, however, is that the current sense of shock, horror, and righteous "Western" indignation directed against the mothers of Mali, Somalia, Egypt, Sierra Leone, Ethiopia, the Gambia, and the Sudan is misguided, and rather disturbingly misinformed.

CONCLUSION: ON THE VIRTUES OF BEING SLOW TO JUDGE THE UNFAMILIAR AND HAVING A HARD SECOND LOOK

I can think of no better way to conclude this essay than by quoting legal scholar Lawrence Sager, who writes:

> Epistemic concerns and the principle of equal liberty counsel that we be slow to judge the unfamiliar, that we take a hard second look at our own factual beliefs and normative judgments before we condemn culturally endorsed practices. So, too, they counsel that extant legal categories of excuse and mitigation not be closed to the distinct experience of cultural minorities. And finally, of course, they require that our robust tradition of constitutional liberty—including the rights of speech and belief, the right of parents to guide the development of their children, and the right of people to be free from governmental intrusion into decisions that ought to be theirs alone—be available on full and fair terms to cultural minorities.[39]

In this essay, as a matter of epistemic concern, I have tried to suggest that we should be skeptical of the anti-"FGM" advocacy literature and the global discourse that portrays African mothers as "mutilators," "murderers," or "torturers" of their children. We should be dubious of representations that suggest that African mothers are bad mothers, or that First World mothers have a better idea of what it means to be a good mother. We should be slow to judge the unfamiliar practice of

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female genital alterations, in part because the horrifying assertions by anti-"FGM" activists concerning the consequences of the practice (claims about mortality, devastating health outcomes, and the loss of a capacity to enjoy sex) are not well supported with credible scientific evidence.

Of course, the anti-"FGM" genre of preemptive overheated claims expressed in moral terms is itself all too familiar. It is the kind of discourse (for example, "you murderer of innocent life") employed by some antiabortion activists, who use it to stigmatize liberal men and women who believe the right to family privacy implies a right to choice in cases of unwanted pregnancy. That is just one more reason to take a second look and hesitate before using the epithet "FGM" to describe the coming-of-age and gender-identity practices embraced by many millions of African women. African women too have rights to personal and family privacy, to guide the development of their children in light of their own ideals of the good life, and to be free of excessive and unreasonable government intrusion.

Imagine an African mother living in the United States who holds the following convictions. She believes that her daughters as well as her sons should be able to improve their looks and their marriage prospects, enter into a covenant with God, and be honored as adult members of the community via circumcision. Imagine that her proposed surgical procedure (for example, a cut in the prepuce that covers the clitoris) is no more substantial from a medical point of view than the customary American male circumcision operation. Why should we not extend that option to the Kono parents of daughters as well as to the Jewish parents of sons, for example?[40] Principles of gender equity, due process before the law, religious and cultural freedom, and family privacy would seem to support the option.

Or imagine a sixteen-year-old female Somali teenager living in Seattle who believes that a genital alteration would be "something very great." She likes the look of her mother's body and her recently circumcised cousin's body far better than she likes the look of her own. She wants to be a mature and beautiful woman, Somali style. She wants to marry a Somali man or at least a man who appreciates the appearance of an initiated

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woman's body. She wants to show solidarity with other African women who express their sense of beauty, civility, and feminine dignity in this way, and she shares their sense of aesthetics and seemliness. She reviews the medical literature and discovers that the surgery can be done safely, hygienically, and with no great effect on her capacity to enjoy sex. After consultation with her parents and the full support of other members of her community, she elects to carry on the tradition. What principle of justice demands that her cultural heritage should be "eradicated" and brought to an end?

I have also suggested that merely posing the question "What about FGM?" is not an argument against cultural pluralism. With accurate scientific information and sufficient cultural understanding it is possible to see the (not unreasonable) point of such practices for those for whom they are meaningful. Seeing the cultural point and getting the scientific facts straight is where tolerance begins. Our cherished ideals of tolerance (including the ideal of being "pro-choice") would not amount to very much if all they amounted to was our willingness to eat each other's foods and to grant each other permission to enter different houses of worship for a couple of hours on the weekend. Tolerance means setting aside our readily aroused and powerfully negative feelings about the practices of immigrant minority groups long enough to get the facts straight and engage the "other" in a serious moral dialogue. It should take far more than overheated rhetoric and offended sensibilities to justify a cultural "eradication" campaign. Needless to say, the question of tolerance versus eradication of other peoples' valued ways of life is not just a women's issue.

The controversy over female circumcision in Africa is not an open-and-shut case. Given the high stakes involved, I believe it is a responsibility of cultural pluralists—both men and women—who are knowledgeable about African circumcision practices to step forward, speak out, and educate the public about this practice. There are many African women who, out of a sense of modesty, privacy, loyalty, or a well-founded sense of fear, may hesitate to speak for themselves. And it is a responsibility of everyone, anti-"FGM" activists and cultural pluralists alike, to insist on evenhandedness and the highest standards of reason

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and evidence in any public policy debate on this topic—or at least to insist that there is a public policy debate, with all sides and voices fully represented.

ACKNOWLEDGMENTS

A longer and far more comprehensive version of this essay will be published in *The Free Exercise of Culture: How Free Is It? How Free Ought It to Be?* ed. Richard A. Shweder, Martha Minow, and Hazel R. Markus (New York: Russell Sage Foundation Press). That essay treats several questions and topics that, because of space limitations, cannot be addressed here, including cultural variations in conceptions of the "normal" body, the lack of a tight link between education and attitudes toward genital surgeries, and the character and implications of "imperial liberalism" and various types of anti-"FGM" "eradication programs." That longer essay also addresses the question of how much toleration of the practice ought to be reasonable in the context of the scientific, medical, legal, and moral traditions of a politically liberal pluralistic democracy such as the United States. It examines the connection between female and male circumcision, and critically evaluates the claim that this particular customary practice of many African ethnic groups should be viewed as a form of "political persecution." Many friends, colleagues, and experts on African initiation ceremonies have generously (and tolerantly) discussed this topic with me and/or critiqued the longer version of this essay. Without in any way holding them responsible for my perspective on this controversial issue I wish to express my deepest gratitude to Fuambai Ahmadu, Margaret Beck, Janice Boddy, David Chambers, Jane Cohen, Elizabeth Dunn, Robert Edgerton, Arthur Eisenberg, Ylva Hernlund, Albrecht Hofheinz, Sudhir Kakar, Jane Kaplan, Frank Kessel, Corinne Kratz, Dennis Krieger, Maivân Lâm, Heather Lindkvist, Hazel Markus, Martha Minow, Carla Obermeyer, Anni Peller, Jane Rabe, Lawrence Sager, Lauren Shweder, Gerd Spittler, and Leti Volpp.

ENDNOTES

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[2]Carla M. Obermeyer, "Female Genital Surgeries: The Known, the Unknown, and the Unknowable," *Medical Anthropology Quarterly* 13 (1999): 92. Carla Obermeyer is an anthropologist and epidemiologist in the department of population and international health at Harvard University.

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[3]Olayinka Koso-Thomas, *The Circumcision of Women: A Strategy for Eradication* (London: Zed Books, Ltd., 1987), 37. Olayinka Koso-Thomas is a gynecologist in Sierra Leone and an anti-"FGM" activist.

[4]Obermeyer, "Female Genital Surgeries," 95.

[5]See Susan Moller Okin with respondents, *Is Multiculturalism Bad for Women?* ed. Joshua Cohen, Matthew Howard, and Martha C. Nussbaum (Princeton, N.J.: Princeton University Press, 1999), 14. Susan Okin is a First World feminist and a political scientist at Stanford University, who contends that multiculturalism is bad for women.

[6]Fuambai Ahmadu, "Rites and Wrongs: An Insider/Outsider Reflects on Power and Excision," in Bettina Shell-Duncan and Ylva Hernlund, eds., *Female "Circumcision" in Africa: Culture, Controversy, and Change* (Boulder, Colo.: Lynne Rienner, 2000), 301; also presented in the panel on "Female Genital Cutting: Local Dynamics of a Global Debate," 18 November 1999, 98th Annual Meeting of the American Anthropological Association, Chicago, Illinois. Fuambai Ahmadu is a Kono woman from Sierra Leone. She grew up in the United States and is a Ph.D. candidate in anthropology at the London School of Economics. At the age of twenty-two she returned to Sierra Leone to be initiated into the "women's secret society" and to be circumcised according to the customs of her ethnic group.

[7]Ibid., 283.

[8]Ibid., 308, 305.

[9]Obermeyer, "Female Genital Surgeries," 80.

[10]Ibid., 81.

[11]Ibid., n. 24.

[12]See quotations above; also ibid., 79.

[13]See, for example, Janice Boddy, *Wombs and Alien Spirits: Women, Men, and the Zar Cult in Northern Sudan* (Madison: University of Wisconsin Press, 1989); Boddy, "Violence Embodied? Circumcision, Gender Politics, and Cultural Aesthetics," in R. Emerson Dobash and Russell P. Dobash, eds., *Rethinking Violence Against Women* (Thousand Oaks, Calif.: Sage Publications, 1996), 77–110; Ellen Gruenbaum, "The Cultural Debate Over Female Circumcision: The Sudanese Are Arguing This One Out For Themselves," *Medical Anthropology Quarterly* 10 (1996): 455–475; Corinne Kratz, *Affecting Performance: Meaning, Movement, and Experience in Okiek Women's Initiation* (Washington, D.C.: Smithsonian Institution Press, 1994); Kratz, "Contexts, Controversies, Dilemmas: Teaching Circumcision," in Misty Bastian and Jane Parpart, eds., *Teaching Africa: African Studies in the New Millenium* (Boulder, Colo.: Lynne Rienner, 1994, 1999); L. Amede Obiora, "Bridges and Barricades: Rethinking Polemics and Intransigence in the Campaign Against Female Circumcision," *Case Western Reserve Law Review* 47 (1997): 275–378 ; Melissa Parker, "Rethinking Female Circumcision," *Africa* 65 (1995): 506–524; Shell-Duncan and Hernlund, eds., *Female "Circumcision" in Africa*; Christine J. Walley, "Searching for 'Voices': Feminism, An-

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[14]Jomo Kenyatta, *Facing Mount Kenya: The Tribal Life of the Gikuyu* (London: Secker and Warburg, 1938), 131.

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[16]Kratz, *Affecting Performance*, 346.

[17]Robert B. Edgerton, *Mau Mau: An African Crucible* (New York: The Free Press, 1989), 254, n. 22; also see Hanny Lightfoot-Klein, "The Sexual and Marital Adjustment of Genitally Circumcised and Infibulated Females in the Sudan," *Journal of Sex Research* 26 (1989): 375–392.

[18]Sandra D. Lane and Robert A. Rubinstein, "Judging the Other: Responding to Traditional Female Genital Surgeries," *Hastings Center Report* 26 (1996): 35.

[19]Bettina Shell-Duncan and Ylva Hernlund, "Female 'Circumcision' in Africa: Dimensions of the Practice and Debates," in Shell-Duncan and Hernlund, eds., *Female "Circumcision" in Africa*.

[20]See, e.g., Asma El Dareer, "Epidemiology of Female Circumcision in the Sudan," *Tropical Doctor* 13 (1983): 43.

[21]Lindy Williams and Teresa Sobieszyzyk, "Attitudes Surrounding the Continuation of Female Circumcision in the Sudan: Passing the Tradition to the Next Generation," *Journal of Marriage and the Family* 59 (1997): 966–981, Table 1.

[22]Koso-Thomas, *The Circumcision of Women*, 2.

[23]See Janice Boddy, "Womb as Oasis: The Symbolic Context of Pharaonic Circumcision in Rural Northern Sudan," *American Ethnologist* 9 (1982): 682–698; Boddy, *Wombs and Alien Spirits*; Boddy, "Violence Embodied?"

[24]See, for example, Koso-Thomas, *The Circumcision of Women*, 7; Lane and Rubinstein, "Judging the Other," quoted above; Otto Meinardus, "Mythological, Historical, and Sociological Aspects of the Practice of Female Circumcision Among the Egyptians," *Acta Ethnographica: Academiae Scientiarum Hungaricae* 16 (1967): 394; Asma El Dareer, *Woman, Why Do You Weep? Circumcision and Its Consequences* (London: Zed Press, 1982), 73.

[25]Ahmadu, "Rites and Wrongs"; Meinardus, "Mythological, Historical and Sociological Aspects of the Practice of Female Circumcision Among the Egyptians," 389.

[26]See, for example, Boddy, "Womb as Oasis"; Boddy, *Wombs and Alien Spirits*; Boddy, "Violence Embodied?"

[27]Fran P. Hosken, *The Hosken Report: Genital and Sexual Mutilation of Females* (Lexington, Mass.: Women's International Network News, 1993); Abraham M. Rosenthal, "The Possible Dream," *New York Times*, 13 June 1995, A25.

[28]Rich and Joyce, *Eradicating Female Genital Mutilation: Lessons for Donors*, 4.

[29]For example, Yael Tamir, "Hands Off Clitoridectomy," *Boston Review* (October/November 1996).

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[30]Yewoubdar Beyene, "Body Politics and Moral Advocacy: The Impact on African Families in the U.S.," oral presentation in the panel on "Revisiting Female Circumcision: Beyond Feminism and Current Discourse," 20 November 1999, 98th Annual Meeting of the American Anthropological Association, Chicago.

[31]The recent exceptions—essays that are more incisive, ethnographically informed, nondefensive, and/or profoundly skeptical of the current anti-"FGM" global discourse—include Ahmadu, "Rites and Wrongs"; Boddy, "Violence Embodied?"; Doriane L. Coleman, "The Seattle Compromise: Multicultural Sensitivity and Americanization," *Duke Law Review* 47 (1998): 717–783; Sander L. Gilman, "'Barbaric' Rituals," in Okin, *Is Multiculturalism Bad For Women?*; Ellen Gruenbaum, "Reproductive Ritual and Social Reproduction: Female Circumcision and the Subordination of Women in Sudan," in Norman O'Neill and Jay O'Brian, eds., *Economy and Class in Sudan* (Brookfield, Vt.: Avebury, c1988); Kratz, *Affecting Performance: Meaning, Movement and Experience in Okiek Women's Initiation*; Kratz, "Contexts, Controversies, Dilemmas: Teaching Circumcision"; Obermeyer, "Female Genital Surgeries: The Known, the Unknown, and the Unknowable"; Obiora, "Rethinking Polemics and Intransigence in the Campaign Against Female Circumcision"; Parker, "Rethinking Female Circumcision"; and some of the essays in Shell-Duncan and Hernlund, eds., *Female "Circumcision" in Africa: Culture, Controversy and Change*. For a sample of views and representations concerning female initiation and circumcision, see also Boddy, *Wombs and Alien Spirits*; Mary H. Cooper, "Women and Human Rights," *CQ Researcher* (published by Congressional Quarterly, Inc.) 9 (1999): 353–376; El Dareer, *Woman, Why Do You Weep? Circumcision and Its Consequences*; Gruenbaum, "Reproductive Ritual and Social Reproduction"; Isabelle R. Gunning, "Arrogant Perception, World-Travelling and Multicultural Feminism: The Case of Female Genital Surgeries," *Columbia Human Rights Law Review* 23 (1991–1992): 189–248; Ylva Hernlund, "Cutting Without Ritual and Ritual Without Cutting: Female 'Circumcision' and the Re-Ritualization of Initiation in the Gambia," in Shell-Duncan and Hernlund, eds., *Female "Circumcision" in Africa*; Carol R. Horowitz and Carey Jackson, "Female 'Circumcision': African Women Confront American Medicine," *Journal of General Internal Medicine* 12 (1997): 491–499; Kenyatta, *Facing Mount Kenya*; Lane and Rubinstein, "Judging the Other: Responding to Traditional Female Genital Surgeries"; Meinardus, "Mythological, Historical, and Sociological Aspects of the Practice of Female Circumcision Among the Egyptians"; Alison T. Slack, "Female Circumcision: A Critical Appraisal," *Human Rights Quarterly* 10 (1988): 437–486; Walley, "Searching for 'Voices'"; Williams and Sobieszyzyk, "Attitudes Surrounding the Continuation of Female Circumcision in the Sudan."

[32]On the connection between circumcision and entrance into powerful "women's secret societies" in Sierra Leone, see Ahmadu, "Rites and Wrongs."

[33]Concerning Kenya also see Kenyatta, *Facing Mount Kenya*; Kratz, *Affecting Performance*; Walley, "Searching for 'Voices.'"

[34]See note 27.

[35]Obermeyer, "Female Genital Surgeries."

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[36]Edgerton, *Mau Mau: An African Crucible*, 40.

[37]Rich and Joyce, *Eradicating Female Genital Mutilation*, 1.

[38]Obermeyer, "Female Genital Surgeries," 93.

[39]See Lawrence G. Sager, "The Free Exercise of Culture: Some Doubts and Distinctions," in this issue of *Dædalus*.

[40]This is basically what was proposed at the Harborview Medical Center in Seattle, until U.S. Representative Patricia Schroeder objected and raised the possibility of a violation of federal law (see Coleman, "The Seattle Compromise"). The constitutional status of the law in question has yet to be tested.

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Hazel Rose Markus, Claude M. Steele, and Dorothy M. Steele

Colorblindness as a Barrier to Inclusion: Assimilation and Nonimmigrant Minorities

THE ASSIMILATION of millions of immigrants from strikingly different worlds into one society is a story that defines America. In the shadow of this American story is another: the struggle to include millions of nonimmigrant minorities—African-Americans, American Indians, Latinos—within the mainstream of society. The first story is a celebration of diversity that reveals America as a haven for religious, cultural, and political difference. The second story tells of an ongoing struggle with difference, in this case a difference not of religion or cultural values but a difference in social, racial, and ethnic status. It is a story that turns on how to bring the powerful American ideal of equality and equal opportunity together with the reality of difference in psychological and social experience that derives from the differential status in society.

In trying to understand this struggle over inclusion, our analysis begins with a known but perhaps underappreciated fact: the societal settings that are central to a group's movement into mainstream American life, settings such as school and the workplace, are experienced differently by America's nonimmi-

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grant minorities than by majority group members. Of course these groups will share similarities of experience in these settings. But group identity makes for important experiential differences. Minority group members will know, for example, that their group has long experienced discrimination in the setting; they may worry that negative stereotypes about their group will influence how they are treated and evaluated there. And, in reaction to these concerns, they may come to feel alienated in the setting. Such group differences in how these public settings are experienced, we suggest, may play an underappreciated role in the shadow story of America's struggle with inclusion.

But underappreciation does not mean that as a society we do not acknowledge historical and ongoing inequalities between these minorities and the American mainstream in educational access, wealth, even freedom of movement. We are a society with a great capacity for self-examination. Yet for some reason we have been reluctant to see that these group differences in lived experience and perspective might be relevant to the goal of achieving inclusion in important public settings like school and the workplace. Here, where our understanding of group differences in lived experience should inform our efforts to achieve inclusion, there is a disconnect. Why?

We will argue that an irony is at work, that one of the chief causes of this disconnect is less the prejudices of American society than one of its best principles: the desire to remedy group prejudice by not seeing group difference, an essentially progressive norm of the post–Civil Rights era in American life. The core of this idea, given legal force by the Fourteenth Amendment, is that people are equal, that differences between people in race and ethnicity should not affect opportunity in society, that it is desirable to be "colorblind," and that—despite some variation in life circumstance—people can succeed in this society roughly in proportion to their efforts and talents. This can be thought of as the race-neutral or colorblind model of how to form a community of people with diverse backgrounds. It does recognize that the life circumstances of all groups are not actually equal, that our local worlds are still substantially organized by race and ethnicity, and that resources, standing,

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and respect are powerfully associated with these factors. But this model rests on the faith that *not seeing* difference is the surest route to reducing these inequalities and improving inclusion. But in recent years, in both public discussion and social science research, there is a growing sense that this model has important limits.[1] In fact, it may make it difficult for our public institutions to see group differences in lived experience and to appreciate their role in inclusion; it may constitute a cultural injunction not to see group difference.

We propose an alternative model of inclusion, one that preserves the American commitment to equality of opportunity but which, in the effort to achieve it, acknowledges group differences in status and lived experience. This model strives to reduce the threat that can be attached to a group's identity in critical public settings like the school and the workplace. We call it *identity safety*. Its goal is to acknowledge differences attached to group identity and to create a setting that is accepting of differences as non-limiting and as a basis of respect. Following Lawrence Thomas we use the term "downward social constitution" to refer to the experience of being in a setting where, based on a given group identity, one is exposed to a potentially limiting and devaluing concert of representations, historical narratives, possible judgments, treatments, interactions, expectations, and affective reactions.[2] Identity safety refers to the effort to rid a setting of this potential for group-linked "downward constitution." We assume that identity safety is a prerequisite of full inclusion. In this sense, then, people's difference—the identity on which this "downward constitution" is based—must be addressed. Otherwise, our reasoning goes, one's sense of being threatened in the setting will linger, becoming its own barrier to full inclusion.

In this essay we are educing a sociocultural-psychological perspective on assimilation, which expands the scope of analysis provided by the typical ideological-legal perspective. The ideological-legal perspective emphasizes individual fairness and equal treatment. The sociocultural-psychological perspective adds to these considerations the ways in which individual experience, particularly identity, is constituted by the content and

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dynamics of one's interpersonal and social environments. Like the ideological-legal view, it is rooted in the protection of individuals from discrimination and in efforts to realize the broad claims of equal liberty for all people.[3] The sociocultural-psychological perspective suggests that fair and equal treatment and legal respect require protection of individual identities from those pervasive systems of representations, expectations, and social interactions that—in the important public settings of school, workplace, and community—may systematically limit and undermine individual potential and the opportunity for inclusion and success.

An identity cannot be achieved or maintained by one's self, alone. Identity is a social product and a social process that is interdependent with one's ongoing interactions. It is through engagement with and recognition by others that an individual becomes a person and identities are conferred. Settings that are characterized by broad patterns of ethnic, racial, or cultural "downward social constitution" will interfere with a person's ability to develop an effective identity as a student, as an employee, as a citizen.

COLORBLINDNESS IN THE CLASSROOM: MAINSTREAM AND MINORITY PERSPECTIVES

To illuminate some of the tacit social psychological barriers to inclusion, we offer the following fictional episode between a white teacher and black parents in a parent-teacher conference about the couple's third-grade son, Bennett Wilson. After discussing Bennett's performance, the parents raise concerns with the teacher, Mrs. Dalton, about the overall racial climate of the classroom and the school.

> Teacher (Mrs. Dalton): "I appreciate your concerns, Mr. and Mrs. Wilson, but the guiding ethic of this school and of my classroom is one of colorblindness. We believe that all of our children are equal; we strive every day to treat them the same."
>
> Mrs. Wilson: "I accept your good intentions and your personal concern. But we noticed that there are no black children in the top third-grade reading group."

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Teacher: "That's true, and I am concerned. But I just don't have any black students who read at the pace of that group. They are a very bright group. To be fair, and to hold to the same standards for all students, the reading group assignments have worked out this way at this point."

Mr. Wilson: "Bennett has another worry. He's afraid he'll be sent to the principal's office, like a lot of the black kids. He also says that the white kids come from a different part of town and that it's harder to be friends with them and do things together."

Teacher: "Even if these things are true, they don't have anything to do with race. I try to treat everyone the same regardless of their race or background. And the principal of this school holds the same value. I hope you don't think this school is racist."

Mr. Wilson: "I don't know. It's just that the black kids seem to be seen as troublemakers. They get disciplined an awful lot and they get harsher punishments. They never get into the gifted and advanced classes. This is hard to ignore."

Teacher: "Please don't be oversensitive. We work really hard not to discriminate on race. We don't see differences based on skin color. We work to make this a place where race does not matter."

Mrs. Wilson: "But Bennett seems to feel like black kids don't get the benefit of the doubt, like race does matter here."

Here are people trying to bridge the American racial divide to form an effective schoolroom community that meets the needs of both the individuals involved and the larger society. The challenge they face is that while they are all talking about the same classroom and school, minority students may experience this setting quite differently than will those in the majority. The pictures on the wall are the same for the two groups, as are the teachers, the students, many of the goals, the rules, the lesson plans, and so forth. But this single school setting can be a very different life context for members of different ethnic groups. Let us examine these perspectives—that of the teacher and that of the minority students—in more detail.

The mainstream perspective of the teacher. The teacher, and those students who share her racial and social class background, are part of a social category of people whose sense of belonging in the classroom is taken for granted. As members of the dominant group in society, their belonging in the central

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institutions of society like school is implicit—not likely to rise to the level of a conscious idea. They are relatively free to pursue the manifest goals of the classroom without worry that their group identity will cause them to be devalued there. For the teacher, then, the functions and goals of the classroom can be taken, more or less, at face value.

Moreover, in responding to the social diversity in her classroom, the teacher can draw on the broad American value that stresses the equality of all Americans, and be comforted by the principle that it is important to treat people from all groups the same way. This is a cultural ideal, which in her teaching and maintaining order she tries to achieve. In fact, the mere existence of diversity in her classroom may lead the teacher to adhere to this ideal even more. Thus, because her own experience is not likely to alert her to group differences in the experience of society's settings, and because she is committed to the cultural ideal of treating all people the same way, she may not readily see that Bennett and his family are likely to experience this same classroom in a very different way.

The minority perspective of the Wilson family. For Bennett, and other minority students, the experience of the teacher's classroom might be quite distinct from that of the socially dominant culture. Of course there are many commonalities of experience—shared learning goals, shared future ambitions, and a shared recognition of the importance of education to progress in society. But there are also likely to be differences, differences that have implications for achievement in the setting. For black students, in addition to whatever else it is, the classroom is a site of contact with the American mainstream. Reflecting the long history of their group's experience in American society, as well as the ongoing nature of that experience, these students can feel at risk of devaluation in this setting. For them, this classroom is a setting that contains an element of threat—what we call an identity threat.

Identity threat. For nondominant groups, there is a sense of threat to group identity arising from multiple sources tied to a long history of racial and group discrimination that has shaped the structure of American society. The fact that considerable

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discrimination continues, the fact that race and ethnicity organize society in ways that sustain group inequalities, makes it difficult for members of nonimmigrant minority groups to dismiss the threat of devaluation based on group identity. So, too, there is the one-way nature of assimilation in America. Members of a minority group, like Bennett and his parents, must assimilate to the culture, standards, styles of the societal or classroom mainstream, while the mainstream—the teacher and majority students—are not required to take an interest in, or value any of the distinguishing characteristics of, the corresponding features of minority groups. There is also the related factor that the styles, histories, and appearances that are projected as markers of success in mainstream settings are predominantly those of the majority group and culture. Functioning together, these features of the school and classroom offer Bennett and his family conditional terms of inclusion: you can succeed here, but you will have do so in the face of the possibility of discrimination, a value scheme that disadvantages the characteristics of your group relative to those of the majority group, and a group-based social organization that can insulate you from mainstream opportunities. In short, the Wilsons are likely to come into this school setting with a long-established concern: that it will not provide Bennett with the same opportunity structure it provides to majority students.

Different experiences, different psychologies. Accordingly, this classroom is likely to hold for the Wilsons, and minority students more generally, an experience quite different, and psychological implications quite distinct, from the experience of the majority students and the teacher. It alerts them to their group identity, making it a relevant lens through which to see and judge their experience in the setting. It makes an easy trust of the setting difficult. Having a sense of trust in what schooling has to offer minority students is difficult when there are discrepancies between how the "diversity goals" of the setting are represented and how they seem to be implemented. They cannot reasonably ignore the possibility that because of their group identity—whether it is an identity chosen and affirmed or just ascribed to them by others—they may be devalued in the

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setting, treated according to a stereotype, or have their prospects neglected. As a consequence the Wilsons can feel that in this setting it is particularly important to be concerned about their group identity—the identity that places them under threat—asserting its positive features and defending its claims to equal treatment. If Bennett were an American Indian or a Latino, the details of the situation would vary, but many similar concerns about identity safety would also be present.

The need for identity safety. This analysis of the Wilsons' situation has a clear implication: for this classroom to provide truly equal opportunity for both majority and minority students, the teacher and school must model the school experience so that it assures identity safety to minority students like Bennett. The school setting must foster a clear commitment to the principle that no one's group identity will be a source of his or her "downward constitution," at least not in the classroom setting. And because a sense of identity threat is likely to be a default assumption of minority families entering the situation, the school should take a proactive approach toward communicating this commitment.

At first suggestion, some teachers might be disinclined to accept the legitimacy of minority students' sense of identity threat and mistrust. In many cases, they can rightfully feel that they have done little to provoke it. They can note their efforts to implement the American ideal of equal treatment for everybody. And following on this idea, they can believe that the problem of mistrust stems from the minority students' oversensitivity. A genuine racial divide can ensue.

MODELS OF COMMUNITY AS CULTURAL MODELS

As Mrs. Dalton interacts with Bennett, a number of interrelated associations, ideas, images, attitudes, expectations, schemas, and response tendencies tied to his ethnic group identity are likely to be continually accessible to her. These representations are a function of the teacher's participation in a color-stratified world. The question is how these elements will lend meaning to her situation. Invoking the widely held notion that race is a

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difference that should not matter, the teacher is attempting to be colorblind. She is striving to be fair and to display her commitment to fairness in her actions with the claim that race is irrelevant in her classroom and in her school. Indeed, this teacher may well be a very accepting person who would score as nonprejudiced on measures of individual racism and prejudice. Yet her commitment to a model of community that says difference does not matter works against the recognition of difference in experience that in many ways defines minority group status. And, however inadvertently, she works against trust and inclusion.

The teacher could, however, use a different model to make sense of the representations and actions that accompany her interactions with Bennett. She could try to organize the situation according to an identity-safety model of community, a model in which the teacher actively resists the tendency to stereotype, to limit, and to "downwardly constitute" Bennett on the basis of his ethnic group identity.

Defining models. Models of community, like the colorblind model, are overarching cultural models that, during a given historical period, organize how Americans form community from peoples of diverse backgrounds. In developing our model-of-community idea, we are building on the concepts of social representations and cultural models.[4] A cultural model is a collection of shared understandings and practices. According to Bradd Shore, these models do several significant kinds of work: "Models make possible our orientation to the world and to each other. Models allow conceptualization, making it possible for us to remember, to think and even to feel. Models enable communication of these thoughts, memories, and feelings to others."[5] It is in this sense that we use the term "model," regarding models of community as collectively held, elaborated, communicated, and diffused interpretive frameworks that at one and the same time are forms of knowledge and social practices.[6] These cultural models are powerful precisely because they are typically taken for granted, transparent. When some life context is organized according to a cultural model, like the specifics of Bennett Wilson's third-grade classroom, it often appears as natural, necessary, and inevitable.

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ONE-WAY ASSIMILATION: AMERICA'S "FUNDAMENTAL" MODEL OF COMMUNITY

In America, the colorblind/one-way assimilation model described succinctly by the teacher to the Wilson family is what might be called the "fundamental" model of community. This is the model that currently seems the best fit with America's philosophical and ideological principles, and is the model enshrined and fostered by the legal system. It is the model that, at least as an ideal, is now proudly extended to all Americans by pedagogy and by the dominant voices in cultural and media messages. We are suggesting, however, that the ideological and legal stance of colorblindness, because it denies the socially constituted differences that are associated with race, differences increasingly well supported by social science research, can work to perpetuate and institutionalize the very racial and ethnic divisions between people that it seeks to overcome.

In the time since the 1964 Civil Rights Act, the cracks in this fundamental model have begun to show. Although the model, with its stress on equality and justice, has become the reigning cultural ideal, few social scientists would argue that it has become, even at the end of the century, a reality. America is still a substantially segregated society.[7] While the full consequences of this growing diversity remain to be seen, some outcomes are already dramatically apparent. As indicated by socioeconomic status, health, housing, and education, nonimmigrant minority groups are not thriving. The poverty rate of Latinos, and of Native and African-Americans, remains critically higher than that of non-Hispanic whites.[8] The mean net worth of whites, for example, is $95,667, four times the $23,818 mean net worth of African-Americans.[9] Moreover, rates of infant mortality, of living in substandard housing, and of crime and victimization are all much higher among Native and African-Americans and Latinos than among whites.[10]

Second, the assumptions of the fundamental model about the nature of difference and inclusion have come under considerable contest. Alternative models of community that are not colorblind and not assimilationist—several forms of multiculturalism, and even separatism—have sprung to the fore-

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ground of public discourse. In some quarters, certainly universities, public schools, and even workplaces, "models wars" have ensued. At the center of these "wars" lie questions about how to understand group difference while developing a community that, as Deborah Prentice and Dale Miller put it, can ". . . recognize and appreciate ethnic and cultural differences without reifying divisive group boundaries."[10]

History and terms of the model. As it emerged in the 1950s, and particularly in the 1954 *Brown* v. *Board* desegregation decision of the Supreme Court, the great advantage of the one-way assimilation/colorblind model was that it sought to overcome segregation and the separate-but-equal model that had dominated American race relations from the beginning of the century. It was not a new model. Assimilation was always the official model of inclusion in the case of America's European immigrant groups. But in the 1950s, and again bolstered by the 1964 Civil Rights Act, it was extended to include African-Americans and other disenfranchised groups, thus becoming, at least as a governing ideal, America's fundamental model of community.

In the colorblind model, group differences are seen to be largely superficial, certainly not substantial enough to warrant a claim on public policy or social organization. This was, after all, a model in counterpoint to the separate-but-equal model that had reified racial difference to the point of apartheid. And this model, at least at the official level, offers straightforward terms of inclusion: if individuals assimilate to the cultural mainstream, they will be included in the American community regardless of color and will be moved along; if individuals do not assimilate, inclusion will be impossible. In this bargain, incorporation into American society is conceptualized, for the most part, as a one-way process. Currently within the United States, most educational and workplace settings are engaging and promoting this one-way assimilation/colorblind model of community. Certainly, differences are to be observed among people; yet these differences, the assumption holds, are the result of other factors (e.g., talent, merit), not race or ethnicity. To acknowledge differences among people that may be associated

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with their group identity is understood to be the same as stereotyping or homogenizing them; it denies them their individuality. At the same time there is a persistent concern with the need to appreciate and understand group difference.

A pervasive and contradictory view. The broad incorporation of the colorblind model of community was recently documented in a study of current American thought about difference and diversity. Victoria Plaut and Hazel Markus sampled the cultural environment, conducting what Thurstone referred to some seventy years ago as a "trawl of public opinion."[12] They conducted focus groups, surveys, and content analyses of media, and found that the most frequently expressed response to differences and diversity in schools and workplaces was that differences among people are superficial and mostly irrelevant.

When probed, this common understanding reveals itself to be complex and self-contradictory. It holds that ethnic and racial variety is pleasing and important, both to the various groups themselves and to society as a whole—so important, in fact, that it can and should be celebrated. This idea, however, is usually coupled with the notion that despite the important diversity to be found in ethnic foods, costumes, customs, and festivals, in the most important respects "people are really all the same." The view is that the differences typically coded by race and ethnicity, although sometimes potentially significant and worthy of appreciation, do not and should not affect how society functions.

The paradoxical pairing of the idea that society should celebrate difference with the idea that this difference doesn't really matter is not accidental. This perspective on difference is an all-American effort to reconcile diversity with equality. As Richard Shweder has observed, the reasoning is that since people are equal, they must be similar.[13] Any diversity claimed is just a matter of superficial difference that can—and, in fact, should—be ignored. The notion that "at the end of the day, people are people" is a pleasant and comforting thought and, when supported by general propositions like "everyone likes to be treated with respect," is hard to resist.

Built into the foundation of the one-way assimilation/colorblind model is a thoroughly modern assumption, one that is still

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at the core of many perspectives on race, ethnicity, and culture in the social sciences. This assumption holds that race, ethnicity, and culture are relatively superficial features of personhood that are overlaid on the "basic" person, and that it is possible to ignore them in the quest for a general and universal personhood. As avowed by one of Plaut and Markus's respondents, a white manager of a very large diverse group of employees in a bank, "I see people for who they really are. When you shed the superficial stuff like color, you can get at the real person."[14]

Plaut and Markus also examined the content of current magazine advertising both as a way of charting the prevailing cultural ideas about differences and diversity and as an indication of whether any change in the conceptual universe is underway.[15] In an analysis of multiple issues of twenty-five popular magazines they found that companies represent their intention to be inclusive by using two common themes: appreciating difference (e.g., "Actually, the good news is great minds don't think alike"—an ad for Goldman Sachs) and being colorblind ("the color of your skin is less important than the color of your imagination. . . . And afterwards, you are no longer quite yourself; you are large, in the knowledge that the only race that really matters is the human one"—an ad for Merill Lynch). Similarly, in surveys of student opinion conducted on several campuses, Plaut and Markus found a pronounced tension in how to think about diversity—"difference is good but since it separates people, it must be relatively unimportant."[16] They noted, however, some significant differences between majority and minority attitudes and representations of difference and diversity—differences that parallel the divide between the teacher's contention that race doesn't matter and the Wilsons' worry that it actually does. White students, for example, endorsed statements like the following significantly more strongly than did minority students:

1) People are similar to me;
2) Too much diversity is harmful so we should emphasize the ways we are similar; and
3) People from minority groups must assimilate.

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In contrast, minority undergraduate students endorsed statements like the following significantly more strongly than did white students:

1) I feel comfortable around others from different cultural and ethnic backgrounds;
2) It's important to have multiple perspectives on campus; and
3) To incorporate diverse perspectives, the university should change.

These survey findings reflect two main underlying tensions between white and minority responses, not unlike the tension between the Wilsons and their son's teacher. First, white students tend to focus relatively more on similarity and sameness, whereas minority students see differences between cultural and ethnic groups. Second, while white students support a one-way assimilation/colorblind model of diversity, minority students seem to support a mutual-accommodation model of diversity. These attitude differences appear to reflect the different perspectives and experiences of students who, because of their ethnic group identification, occupy a majority or a minority position in society. Overall, these studies of how Americans are thinking about difference are consistent with the contention that current understandings about how to create and maintain diverse communities seem to lag far behind the fact of American diversity.

COLORBLINDNESS FROM A SOCIOCULTURAL-PSYCHOLOGICAL PERSPECTIVE

In a country ideologically committed to the ideal of equality, the notion that powerful inequalities shape life experiences differentially has considerable difficulty talking hold. The idea that there are differences in individual behavior associated with status and power is rarely noted.[17] In contrast to the legal-ideological perspective on difference, a psychological perspective that assumes a sociocultural and historical framework begins with the assumption that lives are socially and culturally

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patterned. While the legal-ideological perspective begins with the idea that people are separate and autonomous individuals and that relations with others are subsequently forged, the sociocultural begins with the idea that human existence is inherently relational. Accordingly, people will necessarily engage the world in culture-specific ways that reflect their positioning within it; no one can live outside the context of others. The small, everyday interactions like those between the teacher and the Wilson family reflect their participants' positioning in the social world and their interpretations of it, and they simultaneously maintain and through their actions foster these culture-specific local realities. People cannot by the very nature of social life be "free" of, or apart from, each other's concerns, understandings, or actions. So it matters what these understandings and actions are.

The social nature of existence. The idea of the social nature of the individual is a hallmark of the social sciences and has been central in its analysis of behavior. The social psychologist George Herbert Mead theorized that attending to and incorporating the views of others is an ongoing, moment-by-moment process that lies at the heart of thinking itself: ". . . it cannot be said that the individuals come first and the community later, for the individuals arise in the very process itself—there has to be a social process going on in order that there may be individuals."[18] Within anthropology, the same idea has been affirmed by Clifford Geertz in an often quoted passage: "Becoming human is becoming individual, and one becomes individual under the guidance of cultural patterns and historically created systems of meanings in terms of which we give form, order, point, and direction to our lives."[19] More recently, the philosopher Charles Taylor has again argued for the socially patterned nature of individuality and draws particular attention to the role of social hierarchy in this experience. He writes, "My self-definition is understood as an answer to the question Who I am. And this question finds its original sense in the interchange of speakers. I define who I am by defining where I speak from, in the family tree, in social space, in the geography of social status and functions."[20]

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One of the main frameworks for examining how location in social space creates and maintains social experience is that of mutual constitution.[21] The first tenet of this framework suggests that psychological tendencies are shaped in the process of engaging with others and with the meanings and practices of the communities in which one participates. The second is that these psychological tendencies and individual actions foster and maintain, but can sometimes change, these particular structural realities. For example, to the extent that Bennett experiences being left out or being picked on, he may withdraw and not raise his hand to read. The teacher may then receive "behavioral confirmation" of her view that Bennett does not read well enough or show enough motivation to be in the top group.[22] But if the teacher were to try to encourage Bennett, despite his lack of "appropriate" or "enthusiastic" behavior, she might begin to afford a different social and psychological experience for Bennett, one in which he could feel valued and included. This effort to cross a structural divide could change Bennett's interpretation of what the teacher thinks about him and eventually provide a different psychological experience for Bennett, one in which he might identify with and succeed in school.

The ways in which social locations, situations, and practices regulate, express, and transform the human psyche and shape psychological experience are the subject matter of social and cultural psychology. Research in these areas is progressively revealing that despite the ideology of individualism and the manifold political and legal practices that privilege the individual, people are not just autonomous individuals solely under their own production and orchestration. They are also centers of dynamic interpersonal relationships, and these relationships are significant in determining who they are, who they try to be, and how they behave. Although popular discourse and research in the social sciences and humanities often cast identity as an individual choice, increasingly it is evident that identity is indeed a group project.[23] Identity depends to some large degree on how others see and identify you. We are, as Mead recognized, caught in, and in fact made possible and held together by, each other's nets of meanings, interpretations and actions.[24] If the nets involve a preponderance of representations, beliefs,

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expectations, and actions relevant to one's ethnic group that are negative, marginalizing, essentializing, or limiting, they will be impossible to ignore or reject.

Ironically, to the extent that these nets are positive and supportive and foster culturally valued ability, skill, and potential, as they do for many people in majority groups, they are likely to be unnoticed. As a result, learning, growth, and advancement are most often experienced as the result of individual effort. The ways in which individual behavior and development are scaffolded by a vast network of positive representations and supportive interpersonal relationships is usually invisible.

The social nature of learning. In the exchange between the Wilson family and the teacher, the Wilsons know that the group they are most likely to be identified with stands in a subordinate relationship to the teacher's group. Regardless of the teacher's claims, what the Wilson family knows is that her views, understandings, and expectations cannot be easily separated from those that are broadly communicated and institutionalized within society toward their ethnic group, despite her intentions toward fairness and colorblindness. This is not a failing of the teacher to reason independently or to free herself from the shackles of custom and social pressure. Rather, it is a straightforward reflection of the fact that thoughts, feelings, and actions are given structure and form by those meanings, schemas, scripts, and practices that are continuously available and widely distributed in the community at large. Thought and action outside these interpretive frameworks requires the development and dissemination of alternative systems of meanings and practices with respect to "downwardly constituted" ethnic groups.

Thus, Bennett, and other students like him, find themselves in school settings where they are being constituted by relationships, classroom practices, and learning opportunities that do not reflect them as valued members of the class. The experience of being a young student in this situation—in which he is being "downwardly constituted" by those who are entrusted with his development as a person and a student—has a powerful influence on Bennett's ability to identify with and freely approach the task of learning. He is in the process described by Mead as

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"attending to and incorporating the views of others." When these views are limiting, they can be a substantial barrier to learning.

Specific dramatic evidence for the powerful consequences of the views of others on individual performance is rapidly accumulating and has been recently reviewed in a number of places.[25] In one example, Claude Steele and Joshua Aronson designed a series of experiments to test whether the stereotype threat that black students might experience when taking a difficult standardized test could significantly depress their performance on the test.[26] They asked highly qualified black and white college students at an elite university to take a test made up of items from the advanced Graduate Record Examination in literature. Most of the students were college sophomores, which meant the test was challenging for their abilities; it was this feature that Steele and Aronson reasoned would make the testing situation a different experience for the black participants and for the white participants. For black students, difficulty with the test could make the stereotype of their group relevant to the interpretation of their performance. They know they are especially likely to be seen as having limited ability because of the prevailing representation of their ethnic group. Groups not stereotyped in this way will not experience this extra intimidation. The worry on the part of African-American students is that their performance might cause them to be seen stereotypically, or might inadvertently confirm the stereotype that they do not belong in the walks of life, in the jobs and careers, in which they are heavily invested.

In a series of studies, Steele and Aronson found that when the threat of being stereotyped as less intellectually able than white students was present—that is, when the test was represented as "diagnostic" of ability, so that frustration with it could be taken as confirming the racial stereotype—black students did much worse than white students even when skill differences between the two groups were controlled. But when the threat of being stereotyped was removed by representing the test as a lab measure of problem solving that was not diagnostic of individual differences in ability, black students performed just as well as qualified white students—on the same test. Simply

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giving the students the instruction before the test that it was not a measure of their general intellectual ability removed the possibility of invoking the stereotype of lower intellectual ability for the black students. These studies demonstrate that something other than ability is involved in producing gaps in performance. Clearly, small changes in the environment can change the meaning of the situation in ways that benefit learning and achievement.

CULTURAL CHANGE IN THE CLASSROOM: FROM COLORBLINDNESS TO IDENTITY SAFETY

The perspective of social constitution suggests that cultural change involves the specific actions and interpretations of individuals who create and maintain, but who also can modify, sociocultural realities. Accordingly, to improve intergroup relations and individual outcomes, it should be possible within a given niche, say a school, to change some subset of the prevailing meanings and practices and thereby change the prevailing model of community to improve intergroup relations and individual outcomes. The key is to recognize that race and ethnicity are undeniable social realities that are constitutive of the person and that create differences among people. These differences are by no means essential or immutable; they change as the nature of the social situation changes. They matter, however, because people live their lives in these terms and require recognition of them, and because people respond to one another through the meanings associated with race and ethnicity. Through a concerted action in a given niche, it is possible to move from a colorblind model of community to an identity-safety model of community; to move away from practices of one-way assimilation and toward practices of accommodation that acknowledge the real differences in experience historically imposed by low status and marginality on the nonimmigrant minorities and, increasingly, on new immigrants in American society.[27]

To bridge this divide between mainstream experiences and minority-group experiences and to more closely approach the ideal of equal opportunity, we argue that school and classroom settings should not endeavor to be colorblind. Instead, they

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should strive for a climate in which group difference—the difference in the local worlds experienced by minority and nonminority students in the setting—is commonly recognized by all in the setting and used in achieving a respectful understanding and valuing of all students. Practices that do this convey to minority students that their group identity will be not be used to "downwardly constitute" them—see them as problematic members of the setting—but will instead be used to incorporate them and their perspectives into the setting and to foster their achievement there. For the most part, these interventions will be sensitive to group identity and its consequences—but will also attend to the details of individual social circumstances.

At this point, one might ask: "Why not just affirm the minority students' talents and their valued membership in the class without recognizing their group identity?" Our answer is that this might work well in the short run, on single occasions. But over time, when minority students' group identity is not addressed in the midst of a larger society that makes a great deal of meaning from it, these students may doubt whether they are really safe from identity threat. They may wonder at what point their belonging to their group might make them vulnerable to devaluation.

There are other strategies for dealing with diversity in the classroom that, at first glance, would seem to help create identity safety, but, in fact, work against this goal. Were the teacher in our example to read our arguments she might be tempted to "celebrate diversity" by, for example, displaying in her classroom positive particulars of minority culture, such as pictures of minority heroes, festivals, artwork, and the like. Her intentions here would be good, but the effectiveness of this strategy has everything to do with implementation. Unless these particulars are represented as being of central value for all students, and unless these "celebrative displays" are embedded in a general classroom climate in which the intellectual potential of minority students is taken seriously, such "celebrations" may be mistrusted by minority students and simply ignored by majority students. In fact, if these "celebrative displays" are not coupled with other practices that assure identity safety—for example, challenging work designed to move students to

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high levels of achievement—they may backfire, deepening minority students' sense of identity threat and leading majority students to underappreciate the value of the artistic, political, and intellectual contributions made by those from the minority culture.

Another important challenge to forming community from diversity in the classroom is the question of how to handle the need for skill remediation. Our teacher, for example, believed that she had no minority students who could read at the level of the top reading group. In any third-grade class there will be variation in children's levels of reading skills, especially at the beginning of the school year. In some communities there will be even greater variation in skills, and this variation may be linked to students' race or social status. In these communities, minority students may enter the classroom with weaker skills than the majority students, reflecting a variety of prior educational inequities.

What should our third-grade teacher do? Perhaps the first thing to do is to examine this diagnosis very carefully. It fits so closely with prevailing stereotypes that one might constructively hold it under enough suspicion to reexamine it carefully. For example, before making an educational decision like placing students in stratified reading groups, it would be important for the teacher to use multiple sources of assessment to determine her students' current level of achievement in reading. Still, the teacher may find differences in achievement between the black and white students. Then what?

The guiding principle is that the effort to remediate skills in the setting must not suggest, even indirectly, that the distribution of skills among the groups somehow reflects a limiting group difference. This is the risk of group remediation strategies that allow a confounding of group identity with skill remediation, especially for groups whose abilities are already negatively stereotyped in the larger society. Ability tracking in elementary and secondary schools often sees minority students being disproportionately placed in lower tracks, tracks presumably suited to more limited abilities. Some minority programs at the college level also have the feature of targeting remediation efforts almost exclusively at the minority student population.

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Such practices, it is quite likely, make the negative group stereotype highly salient in the broader school setting, greatly exacerbating the sense of identity and stereotype threat minority students experience.

Practices that promote identity safety. To promote identity safety, the school and our teacher must take a group difference that is often negatively represented in the larger society and model it in the local world of the school and classroom as a nonlimiting difference that is a basis for respecting a person—rather than a basis for "downwardly constituting" a person as less smart, less deserving, less culturally appropriate, and less valuable to the school community. This idea can be best illustrated, perhaps, by describing some practices that our teacher might have used in her classroom. Had these practices been in place, they might have preempted the Wilsons' concerns.

In the context of showing that she recognizes the positive features of minority students' group identity (by, for example, representing it in classroom displays, books that are read, and music that is studied, and in other curriculum areas) the teacher can express through her actions and words the highest expectations for *all* students' learning—expressly for minority students. She can focus on the idea that every student comes to school to learn—and that with work, regardless of their current level of skills and understanding, all students can steadily progress to the highest levels. This practice seeds the local environment with the idea that minority-group identity is no barrier to learning. Challenging work, coupled with access to academic help, promotes learning in students from any social group. This challenging work conveys the idea that they are able, and, with work and practice, will catch up. The opportunity to do hard work in the context of high expectations for success may also go a long way toward achieving a sense of identity safety among minority students.

The teacher can "mainstream" positive features of minority-group culture and identity. That is, in presenting this material—in classroom displays, curriculum materials, and learning tasks—she can stress its value to all students, not just to those of the relevant minority group. Conveying the general value of the many cultures represented in the classroom helps to construct

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the group identity of the minority students in this local environment in positive terms that diminish their sense of identity threat.

The teacher can avoid groupings that confound group identity with skill levels. Having advanced reading groups with no minority students in them is certainly not a good idea from the standpoint of minority student identity safety, and it is not the only way to foster progress among the good readers. But if such a grouping does seem unavoidable, efforts should be made to ensure that the groupings are only temporary. Countervailing groupings should be created in the classroom around other intellectual activities that do not confound minority status with academic skills. When students work in groups cooperatively on challenging tasks, they will be exposed to various perspectives and intellectual contributions. By focusing on cooperative learning instead of competition, students will develop their trust and respect of one another.

Finally, respect and caring for each of the students should be evident in every interaction between the teacher and students. Of course, teachers should help students treat one another with respect and fairness. For example, when students are in conflict, teachers can approach the situation as a learning opportunity. They can refrain from blaming, forgo acting as judge and jury, and avoid inadvertently targeting minority students for punishment. Instead, in her respectful and caring relationship with each student, the teacher can convey the worth of all students and help them learn to get along.

CONCLUSION

We have argued here that the failure to include millions of nonimmigrant minorities successfully in the mainstream of society stems in some large part from a pervasive "downward social constitution" of these groups by the majority culture, not from individual racism. This tacit and very often unintended set of processes results in many African-Americans, American Indians, and Latinos being persistently devalued and having their prospects and opportunities limited or neglected. This general devaluation and continuing threat to identity occurs at both the

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collective level (in terms of public representations and institutionalized policies and practices) and at the individual level (in terms of attitudes, expectations, relationships, and actions). The ideological-legal stance of colorblindness functions as a barrier to assimilation and integration because it argues for ignoring differences in race and ethnicity, working against the recognition of these powerful societal dynamics and the real differences in psychological experience such dynamics afford.

Accordingly, we argue that the colorblind model broadly affirmed in American society might be replaced in many contexts with an identity-safety model. The identity-safety model of community acknowledges the "downward social constitution" produced by minority status and promotes the development of practices that work to break this cycle. An identity-safety model recognizes that others' views and evaluations of an individual are powerful and world-shaping, even if ignored or contested by the individual. Central to a short-circuiting of "downward social constitution" are practices that promote inclusion and a sense that one's group identity will not be a source of devaluation. This approach to assimilation requires mutual accommodation by the mainstream and minority cultures. Proactive efforts to work against exclusion are critical to ensure a sense of belonging and trust among all members of society. So, for example, in her relationship with Bennett, Mrs. Dalton is responsible for the ways in which her views of him shape Bennett's identity. More broadly, we have suggested that the processes that reflect and drive disparities between people might be better understood, predicted, and managed by a focus on the cultural models of community that drive them rather than by a focus on individual attitudes, prejudices, and actions.

Many essays in this issue ask, in essence: how free should the free exercise of culture be? How tolerant must we be of the cultural practices of others that are unfamiliar or morally troubling? Assuming that an effective democratic society must be an inclusive one that cannot be separated and balkanized, toleration for others involves much more than just noninterference. It involves active efforts to promote the identity safety of other people, efforts to ensure that group-linked representations, expectations, and reactions are not limiting, devaluing,

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and alienating. To this end, Americans must become sufficiently practiced in valuing and respecting each other to achieve the level of inclusion and interdependence that is essential to maintain a stable society in a changing world.

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ENDNOTES

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The commitment of liberalism to state neutrality in matters of personal belief, its resolute individualism, its stress on liberty, on procedure, and on the universality of human rights, and, at least in the version to which I adhere, its concern with the equitable distribution of life chances is said to prevent it either from recognizing the force and durability of ties of religion, language, custom, locality, race, and descent in human affairs, or from regarding the entry of such considerations into civic life as other than pathological—primitive, backward, regressive, and irrational. I do not think this is the case. The development of a liberalism with both the courage and the capacity to engage itself with a differenced world, one in which its principles are neither well-understood nor widely held, in which indeed it is, in most places, a minority creed, alien and suspect, it not only possible, it is necessary.

Clifford Geertz

From *Available Light: Anthropological Reflections on Philosophical Topics*
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To the extent that women in the North hold greater power than women in the South, the former's errors in its construction of the lives of the latter are not merely regrettable, but sometimes downright dangerous. Azizah al-Hibri illustrates this in the context of international human rights conferences. She relates that, much to the dismay of women from the Third World, First World women used their organizational skills at the 1981 UN Mid-Decade for Women Conference in Copenhagen, the 1993 World Conference on Human Rights in Vienna, and the 1994 International Conference on Population and Development in Cairo to control their proceedings and to speak in the name of all women. In Copenhagan, First World women announced that the gravest concerns of Third World women were veiling and clitorodectomy; in Cairo they said that these were contraception and abortion. When Third World women finally spoke on their own behalf in Cairo, they asserted, instead, that their highest priorities were peace and development! Their voices, however, were drowned out by those First Worlders keen on pushing the Cairo conference to focus, as al-Hibri puts it, on "reducing the number of Third World babies in order to preserve the earth's resources, despite (or is it because of) the fact that the First World consumes much of these resources."

Maivân Clech Lâm

From "Between Nationalism and Feminism: Indigenous Women, Community and State," in *The Free Exercise of Culture,* ed. Richard Shweder, Martha Minow, and Hazel Markus
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Frankly I don't give a damn if opposing this is a violation of someone's culture. To me, female genital mutilation is a violation of the physical and spiritual integrity of a person (Tilman Hasche, a political asylum lawyer).

T. Egan

From "An Ancient Ritual and a Mother's Asylum Plea,"
New York Times, 4 March 1994
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I have grown up to the age of fifty years, and this is the first time anyone has come forward to ask me why we do these ceremonies. It doesn't matter what other people think because we are happy with our customs. We will carry on with our lives. (Amy Kendoh, a member of a women's "secret society" in Sierra Leone, where about 90% of women have been initiated.)

H. F. French

From "Grafton Journal: The Ritual—Disfiguring, Hurtful, Wildly Festive,"
New York Times, 31 January 1997
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